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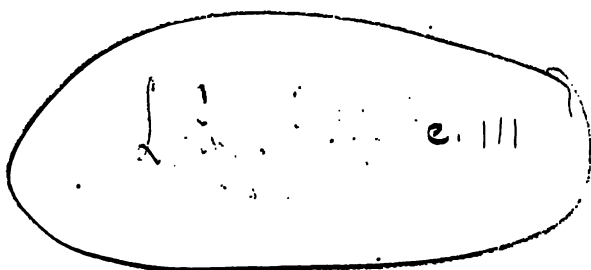
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THE
STUDENT'S GUIDE
TO
STEPHEN'S NEW COMMENTARIES
ON THE LAWS OF ENGLAND.

BY
EDWARD HENSLOWE BEDFORD,
SOLICITOR, 9, KING'S BENCH WALK, TEMPLE.

*Editor of "The Preliminary," "Intermediate," and "Final," and Author of
"The Preliminary Digest,"
The Guide to the Preliminary Examination for Solicitors, The Preliminary
Guide to Latin Grammar, The Intermediate Examination Guide, The Inter-
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Action in the Chancery Division; &c., &c.*

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STEVENS & SONS, 119, CHANCERY LANE,
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1879.

LONDON

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PREFACE.

THE fact of Stephen's Commentaries being set for the Intermediate Examination of 1880 necessitates my bringing out another Guide. I have founded my questions as well as I could on those set at by-gone Examinations, and I have in many instances endeavoured to anticipate the Examiners—I hope with fair success. In my answers I have epitomised the subject-matter as much as possible, and I trust that Students will find the work a help towards mastering the contents of “The Commentaries.”

E. H. B.

9, KING'S BENCH WALK,
INNER TEMPLE,
January, 1879.

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Another of the Author's pupils took a certificate in the Easter, and another in the Michaelmas Sittings, 1878.

BEDFORD'S GUIDE

TO

STEPHEN'S COMMENTARIES.

CHAPTER I.

THE NATURE OF LAWS IN GENERAL.

What is law and what are the various kinds ?

Law is a rule of action prescribed by a superior to an inferior power.

It may be divided : (1) into the Law of Nature ; (2) the Revealed or Divine Law ; (3) the Law of Nations ; and (4) the Municipal Law.

What is the law of nature ?

It is the will of Our Maker, prescribed by him, and discoverable by the faculty of reasoning.

What is the Divine or revealed law ?

It is also the Law of Nature discovered by direct revelation.

What is the law of nations ?

That which regulates the conduct and mutual intercourse of independent states with each other by reason and natural justice, principally now embodied in mutual compacts.

What is the municipal or civil law ?

“ A rule of civil conduct prescribed by the supreme power in a state commanding what is right, and prohibiting what is wrong.”

B

It is a rule permanent, uniform, and universal. It is not advice or counsel, nor a compact or agreement. It is a rule of civil and not of moral conduct, and it is prescribed because it has to be notified to people to be obeyed.

For what purpose was society and government respectively formed?

Society, for the protection of individuals. States or government for the preservation of society.

What naturally exists in every form of government?

An absolute supreme power to which the right of legislation belongs.

How many forms of government were there according to the ancients?

Three, viz., (1) the Democracy, where such supreme power is lodged in an aggregate assembly; (2) Aristocracy, in a council; and (3) Monarchy, when it is entrusted in the hands of a single person.

Explain the British Constitution as regards its executive and legislative power?

As regards its executive power it is Monarchical.

And as regards its legislative, it is (1) Aristocratical as regards its Upper House; and (2) Democratical as regards its Lower House.

What are the parts of which municipal law consist?

- (1.) The Declaratory, which defines what is right and wrong.
- (2.) The Directory, which consists in commanding the observation of right or prohibiting the commission of wrong.
- (3.) The Remedial, or method of recovering a man's private rights and redressing his private wrongs.
- (4.) The Sanction or Vindictory, which is the provision for punishment of public wrongs, and, inasmuch as the main strength of the law consists in the penalty, herein is to be found the most forcible obligation of human laws.

CHAPTER II.

THE LAWS OF ENGLAND.

Into what two kinds may the Laws of England be divided ?

- (1.) The *Lex Non Scripta*, the Unwritten or Common Law.
- (2.) The *Lex Scripta*, the Written or Statute Law.

What does the Lex Non Scripta include ?

- (1.) General customs, which are in reality the Common Law.
- (2.) Particular or local customs.
- (3.) Particular Laws by custom adopted and used by particular Courts.

What are the written or Statute Laws ?

They are the statutes or Acts of Parliament which are passed by the Sovereign with the consent of the Lords and Commons in Parliament, to supply the defects or amend what is amiss of the unwritten law. The oldest of the statutes is the "Magna Charta."

How may statutes be divided ?

Into (1) public, which is a universal rule affecting the whole community ; (2) private, which are exceptions and merely affect particular persons or private concerns.

The latter are sub-divided into (1) local, such as an enclosure act, which merely affects a particular locality ; (2) personal, as a naturalization act only, affecting a particular person.

It might be noticed that 13 & 14 Vict. c. 21, enacts that all statutes passed after the then next stated session, are public acts, unless otherwise declared.

Statutes may also be considered as declaratory, penal, and remedial. Distinguish between them.

They are :

- (1.) Declaratory in cases of doubt or difficulty, as to what is really the law on the point.

- (2.) Penal, as the game laws, which simply point out the various penalties for the offence ; and
- (3.) Remedial, when they supply the defects and superfluities of the Common Law, which may have arisen from time or change of legislation.

What are the rules for the construction of Acts of Parliament ?

- (1.) They operate from the date they receive the royal assent, unless otherwise mentioned, or in other words, statutes do not operate retrospectively as a general rule.
- (2.) The construction must be according to the intents, and with reference to the object for which such statute was passed, not according to the mere letter.
- (3.) In the construction the judges must consider (1) the old law ; (2) the mischief ; (3) the remedy.
- (4.) The construction of remedial statutes is to be liberal, that of penal, strictly followed.
- (5.) All other statutes, which have been passed *in pari materia*, must be considered.
- (6.) General words cannot extend statutes treating of inferiors, to superiors.
- (7.) The Common Law supplies general provisions of statutes with every necessity to render them effectual.
- (8.) A subsequent statute may repeal a prior one by implication, which it always does so far as the latter is contrary to the former.
- (9.) If a statute repealing a prior one is itself repealed, the former is not revived unless words are added to that effect.
- (10.) Statutes derogating from the power of subsequent parliaments are not binding.

What was the origin of Equity ?

To moderate the rigour of both the unwritten and the written law in matters of private right, and also to assist, moderate, and explain the preceding rules of interpretation and construction.

What is the foundation of general customs or the common law properly so called ?

Immemorial universal usage, of which the judicial decisions are

the evidence, which decisions are preserved in the public records ; explained in the year books and reports, and digested by writers of approved authority.

What are particular customs ?

Those which are commonly in use within some peculiar districts, and affect only the inhabitants of those districts, as gavelkind in Kent, Borough English, the customs of London, the Lex Mercatoria.

What are the rules relating to particular customs ?

- (1.) They must be proved to exist.
- (2.) They must be legal, or allowed when proved.
- (3.) The legal construction they require.

What rules have been laid down as to the proof of the legality of particular customs ?

- (1.) They must have been immemorial, *i.e.* existed since 1189, 1 Richard I.
- (2.) Continual.
- (3.) Peaceable and acquiesced in.
- (4.) Reasonable.
- (5.) Certain.
- (6.) Compulsory.
- (7.) Consistent.

With regard to particular customs they must be construed strictly, and no custom can prevail against an express Act of Parliament.

What are particular laws ?

They are such as by special custom are adopted and used only in certain peculiar Courts, *viz.*, the Civil and Canon Laws.

Of what does the Corpus Juris Civili consist ?

The Civil Law, which is generally understood as the Roman Law, consists of Justinian's (1) Institutes ; (2) the Digests, or Pandects ; (3) the Code ; (4) the Novels ; (5) certain edicts of Justinian, posterior in time to other books and being a supplement to the original compilation.

Of what does the Corpus Juris Canonici consist?

- (1.) The Decretia Gratiani, 1151.
- (2.) Gregory's Decretals, 1230.
- (3.) Liber Sextus Decretalium, 1298.
- (4.) The Constitutions of Clement V., 1317.
- (5.) Extravagantes Joannis XXII.
- (6.) Extravagantes Communes.

There are also legatine constitutions, from 1220—1268, and provincial constitutions.

In what courts are the civil and canon laws permitted to be used?

- (1.) The Ecclesiastical Courts.
- (2.) The Courts of Admiralty ; and
- (3.) The Chancellor's Court of the University of Cambridge.

To what control are these courts subject?

- (1.) To the superintendence of the Courts of Common Law.
- (2.) To their interpretation of their Acts of Parliament ; and
- (3.) An appeal to the Queen.

What are Counties Corporate?

Such as London, York, Bristol, Coventry, Norwich, &c. They are cities and towns which have had the privilege granted them by the Crown of being counties in themselves, and thus governed by their own sheriffs and magistrates without the interference of the officers of the county at large.

CHAPTER III.

THE COUNTRIES SUBJECT TO THE LAWS OF ENGLAND.

What countries are governed by the Laws of England?

At the Common Law the kingdom of England, which is governed by our Municipal Laws, did not include Wales, Scotland,

Ireland, or Berwick-on-Tweed, though they had in most respects communion as regarded local customs, &c.

How was Wales subjected to the Laws of England?

Wales was originally conquered by Edward I., but it was not admitted to a thorough communion and equalization of laws until the reign of Henry VIII., when it was enacted by 27 Henry VIII. c. 26, that

- (1.) The dominion of Wales should be for ever united with the kingdom of England.
- (2.) That all Welshmen born should have the same liberties as other the Queen's subjects.
- (3.) That lands in Wales should be inheritable according to the English tenures and rules of descent ; and
- (4.) That the laws of England, and no other, should be used in Wales.

And it ought to be remembered that Wales is included in the word "England" in any Act of Parliament. See also 1 Will. IV. c. 70, abolishing the Courts of Great Session, and regulating the Assizes, and 2 Will. IV., c. 55, as to returning members for Wales.

How is Scotland affected by Municipal Laws?

Scotland was annexed to England by James VI. of Scotland and I. of England, but it was not actually united with England until the Act of Union, 6 Anne, c. 11, May 1, 1707.

Notwithstanding the union, Scotland retains its own Municipal Laws, though subject to regulation by the British Parliament ; but it must be remembered that all statutes passed since the union, of a general nature, extend to Scotland, though not mentioned, or if it is not to be included it must be so declared.

How is Berwick affected?

The town was originally part of Scotland ; was conquered by Edward I. ; its constitutions were re-modelled and put upon an English footing by James I. ; therefore, though it has derived some ancient local peculiarities from Scotland, it is bound by all Acts of the British Parliament only mentioning "England."

How is Ireland affected?

Ireland was conquered by Henry II., who was called only Dominus Hiberniæ, and such was the title of its English rulers until Henry VIII. adopted the title of king. It is a distinct subordinate kingdom, governed by the Common Law of England, and, since the union 1st of January, 1801, bound by modern Acts of Parliament, whether mentioned or not, unless expressly excepted, or there be a clear intention.

Ireland has its own Courts of Justice, with an appeal to the English House of Lords.

Are the Island of Man and the Channel Islands affected by English Laws?

The Island of Man is a territory distinct from England, formerly granted to private individuals but finally purchased by the Crown in 1765. It is governed by its own laws passed by the House of Keys, and no English process, save Habeas Corpus, is of any avail there; neither is it bound by modern Acts of Parliament unless specially included.

The Channel Islands, *i.e.* Jersey, Guernsey, Alderney, and Sark, are in the same way governed by their own laws, which are mostly old Norman customs embodied in *Le Grand Coutumier*. Her Majesty's Commission is alone of any force therein, but no English writs or other process. These Islands are not bound by modern Acts of Parliament, unless specially included, and the cases are heard before their own officials, called Bailiffs and Jurats, with an ultimate appeal to the sovereign in council.

How would the colonies be differently affected by the English Laws?

It entirely depends whether they are obtained by occupancy, cession, or conquest. Taking for example our colonies in America, Australia, and the West Indies, occupants of our colonies take into them only so much of our law as is applicable to the situation.

Assuming the country to have been gained by conquests or ceded, they originally had their own laws, therefore they remain subject to our Parliament altering or changing those laws, or, in the event

of the original laws being against the Law of God. See also the Foreign Jurisdiction Act, 6 & 7 Vict. c. 94, and 28 & 29 Vict. c. 63.

What is the jurisdiction of the Courts of Admiralty and the Common Law respectively over the High Seas ?

Over the main sea, which begins at low water mark the Court of Admiralty has sole jurisdiction. The Courts of Admiralty and the Common Law jurisdictions alternate between high and low water mark.

Into how many divisions is the territory of England divided ?

- (i.) The Ecclesiastical, which consists of the two provinces of Canterbury and York, and each of which is again sub-divided into (1) dioceses ; (2) arch-deaconries ; (3) rural deaneries ; and (4) parishes.
- (ii.) The Civil, which is again sub-divided into (1) counties, some of which are palatine ; (2) sometimes into rapes, lathes, or trithings ; (3) hundreds or wapentakes ; and (4) towns, villages or tithings.

How many Counties Palatine are there ?

There are three :

- (1.) Chester, of which the Prince of Wales is Earl.
- (2.) Durham, governed by the Bishop of Durham, and vested in the Crown by 6 & 7 Will. IV. c. 19, amended by 21 & 22 Vict. c. 45 ; and
- (3.) Lancaster, constituted by Henry IV. in his first Parliament.

CHAPTER IV.

THE RIGHTS OF PERSONS.

What are the objects of the laws of England ?

- (1.) Rights. (2.) Wrongs. Each of which are again respectively subdivided into the rights of persons, or

the rights of things; and into private wrongs which are civil injuries; and public wrongs, which are crimes and misdemeanours.

What are the rights of persons, and how are they strictly denominated?

They are such as concern and are annexed to the persons of men. And when the person to whom they are due is regarded, they are called simply rights; but when we consider the person from whom they are due, they are then denominated duties.

What are the absolute rights or civil liberties of Englishmen, as frequently declared in Parliament?

- (1.) The right of personal security.
- (2.) Personal liberty.

What is the right of personal security?

It consists in the legal enjoyment of life, limb, body, health, and reputation.

What is duress and what are the various kinds?

Duress is where a man is constrained, by force of loss of life or limb, to do an act.

It is of two kinds: (1) Of imprisonment; (2) *per minas*, which is threats of loss of life or limb.

How are the rights of life and limb determined?

By death natural or civil, which latter might occur by (1), attain for treason or felony; (2), banishment; (3), abjuring the realm; (4), becoming a monk.

What is the right of personal liberty?

It consists in the free power of locomotion without illegal imprisonment, restraint, banishment, and is especially secured, (1), by the Magna Charta; (2), the Petition of Right; and (3) the Habeas Corpus.

CHAPTER V.

THE RIGHTS OF PROPERTY.

What is the right of private property ?

It consists in every man's free use and disposal of his own lawful acquisitions, without injury or illegal diminution.

Whence comes dominion over all external objects ?

It has its original from the gift of the Creator to man in general.

In whom was the substance of things vested at first ?

The substance of things was at first common to all mankind, yet a temporary property in the use of them might even then be acquired and continued by occupancy.

What was established in process of time ?

A permanent property in substance as well as the use of things, which was also originally acquired by occupancy only.

Lest this property should determine by the owner's dereliction or death, whereby the thing would again become common, what did societies establish ?

Conveyances, wills, and heirships, in order to continue the property of the first occupant, and where by accident such property became discontinued or unknown, the thing usually resulted to the sovereign of the state by virtue of the municipal law ; but of some things which are incapable of permanent substantial dominion there still subsists only the same transient usufructuary property which originally subsisted in all things, such as light, air, water, and animals *feræ naturæ*.

What care does Parliament take of personal property ?

A man cannot be taxed without his own consent in Parliament by the voice of his representative.

He cannot be made to part with his property except by Parliament, and then only on a proper indemnification.

In this property or exclusive dominion consist the rights of things; what are they?

1. Things real. 2. Things personal.

What are things real?

Such as are permanent, fixed and immoveable, which cannot be carried out of their place,—as lands, tenements, or hereditaments, together with their rights and profits.

What are things personal?

Goods, money, and all other moveables, which may attend the owner's person wherever he thinks proper to go.

CHAPTER VI.

THE DIVISION OF THINGS REAL.

All things real are reducible to one of three classes. What are they?

- (1.) Lands.
- (2.) Tenements.
- (3.) Hereditaments.

It might be noticed that the second includes the first; and the third includes the first and second.

What is land?

"Any ground, soil, or earth whatsoever," including not only the face of the earth, but everything under and over it.

The maxim is *Cujus est solum, ejus est usque ad cælum (et ad inferos)*.

What is a tenement?

Though usually signifying houses and buildings, it includes

everything that may be holden, assuming it be of a permanent kind, such as lands, rents, commons, &c.

What is a hereditament, and what are the various kinds ?

The term includes not only both the former, viz., lands and tenements, but also whatever may be inherited, as an heirloom, being the most comprehensive denomination of things real. Hereditaments are either corporeal or incorporeal.

Distinguish between corporeal and incorporeal hereditaments.

Corporeal hereditaments include land in the largest sense of the word, that is, not only the surface, but every other *object of the senses* belonging thereto ; and here in the main they are distinguished from incorporeal hereditaments, which are neither visible nor tangible (such as an annuity), but consist of the rights issuing out of things corporeal, or concerning, or annexed to, or exerciseable therewith.

CHAPTER VII.

TENURES.

How may things real, or corporeal hereditaments be considered ?

(1) As to their tenures ; (2) their estates ; (3) their title or the means of acquiring or losing them.

Whence is the doctrine of tenures derived ?

From the Feodal Law, which was planted in Europe by its northern conquerors—at the dissolution of the Roman Empire, whence we derive the relation of lord and vassal.

What were pure and proper feuds ?

Parcels of land allotted by a chief to his followers, to be held on condition of personally rendering due military service to their lord. This kind of interest was termed *feudum* or a feud, meaning an

estate held for a stipend or reward, in contradistinction to *allodium*, which was the free and independent method in which the original conquerors held their share of the subjugated country. They were granted by the words *dedi et concessi*, perfected by investiture, to be held under the bond of fealty, supplemented by homage, were inheritable only by descendants, and could not be transferred without the mutual consent of the lord and vassal, which necessarily led to the doctrine of subinfeudation.

Were there any further incidents introduced into the relation of lord and vassal ?

- (1.) Aids, (i.) sums of money payable to ransom the lord ; (ii.) to knight his eldest son ; (iii.) to marry his eldest daughter.
- (2.) Reliefs, payable on taking up an estate on lapse or death.
- (3.) Fines on alienation.
- (4.) Escheat and forfeiture, the two methods of dissolution of the relation. The first occurring on failure of heirs, the second in a breach of duty.

What were improper feuds ?

They were derived from the others, but differed from them, (1) in their origin, having principally been obtained by barter, (2) in their services and renders, which were less honourable, or consisted of a rent ; and (3) in their descent indifferently to males or females, and other circumstances.

When were the lands of England converted into feuds of the improper kind ?

Some time after the Norman Conquest, probably about the compilation of the Domesday book, which introduction of feuds gave rise to the grand maxim of Tenure, viz., that "all lands in the kingdom are holden mediately or immediately of the sovereign ;" hence the terms "tenements," "tenants," "tenure."

How were lands said to be held of the sovereign direct ?

In capite or in chief ; (1) *ut de honore*, the king being proprietor of an honour, castle, or manor ; (2) *Ut de Coronâ*, which was of the crown, which latter was the general tenure,

The king was considered "Lord paramount," and if any of the tenants *de coronâ* alienated their property, they were called "mesne" lords, and their tenants "paravail."

Wherein did the distinction of tenures exist ?

In the nature of their services they were, (i.) as to quality; (1) free, *i.e.* as not unbecoming a soldier or free man as serving his lord in the wars; or (2) base, for peasants, as ploughing, &c.; (ii.) as to the quantity and the period at which they were required, (1) certain, stinted, and not to be exceeded, as to pay an annual rent, &c.; or (2) uncertain, dependent on contingencies.

How did these distinctions give rise to the various lay tenures ?

(1.) In chivalry or knight-service the service was free but uncertain. (2.) In free socage the service was free and certain. (3.) In pure villenage the service was base and uncertain; and, (4.) in privileged villenage or villein socage the service was base but certain, prevailing principally amongst the tenants of the king's demesnes.

The last two, viz., pure and privileged villenage, were subsequently included in the term copyhold.

What was the most universal ancient tenure ?

That in chivalry or by knight-service, in which the tenant of every knight's fee was bound, is called upon to attend his lord to the wars. This was granted by the words *dedi et concessi*, transferred by "livery," and perfected by homage and fealty, and usually involved: (1) Descent; (2) wardship; (3) marriage; (4) aids, as before mentioned; (5) reliefs; (6) primer seisin, *i.e.* a year's profits payable by heir of tenant in capite dying possessed of a knight's fee, subsequently taken by the Popes under the name of *primitie* or first fruits; (7) alienation other than by will; (8) fines on alienation; (9) escheat and forfeiture.

What was the tenure by grand serjeanty, and how did it differ from chivalry ?

It is a species of knight-service, and differed from chivalry

merely in its render or service, and not in its fruits or consequences, the tenant being bound to do some special honorary service to the king in person, such as carry his banner, and not to serve him generally in war, neither did he pay "aid" or "escuage."

What was the tenure by cornage ?

It was a species of grand serjeanty, viz., where held direct of the sovereign its duties were to wind a horn when the Scots or other the king's enemies invaded the country.

What was scutage or escuage ?

Pecuniary assessments into which the inconvenient personal service in chivalry was at length gradually changed. The word is derived from the Latin *scutagium*.

What became of these military tenures ?

They were all, except tenures of Frankalmoign, copyholds, and the honorary services of grand serjeanty, totally abolished and reduced to free socage by 12 Car. II. c. 24.

What is socage ? and how was it divided ?

A tenure by any certain and determinate service. It was divided into two kinds, (1) free socage, where the services in addition to being free were honourable, now known as freehold ; (2) villein-socage, where the services were base but certain, hence copyhold tenure.

Did free socage law partake at all of the feudal nature as well as those in chivalry ?

It did strongly, being created by the same words, and in the same way, and holden subject to (1) the same fealty ; (2) the same rules of descent ; (3) to wardship (of the nearest relative) ; (4) to marriage (which was, however, of no value to the guardian) ; (5) to reliefs ; (6) to primer seisin ; (7) to alienation ; (8) to fines on alienation ; (9) to escheat and forfeiture.

It must, however, be remembered that 12 Car. II. c. 24 has abolished *Valor Maritagii*, primer seisin, fines on alienation, and 33 & 34 Vict. c. 23, escheat for felony.

What particular varieties does the tenure of free socage include ?

(i.) Petit serjeanty ; (ii.) tenure in burgage, including Borough English ; (iii.) gavelkind.

What is petit serjeanty ?

It is a free socage tenure held of the sovereign, by giving annually some small implement of war, as a sword.

What is tenure in burgage ?

It is when the sovereign, or some other person, is lord of an ancient borough in which the tenements are held at a rent certain. It is a free socage tenure subject to special customs, the most extraordinary being the custom of Borough English, by which the youngest son succeeds ; it is analogous to the custom of Marcheta in Scotland.

What is the tenure in gavelkind ?

It is a species of socage tenure modified by custom principally prevalent in Kent. The following are its peculiar incidents ; (1) the tenants can alien at fifteen ; (2) there is no escheat in case of execution for felony, the maxim being, “the father to the bough, the son to the plough ;” (3) the tenant had the power of devising his lands by will ; (4) the lands descend to all the sons together.

Whence sprang our modern copyholds ?

As we have before seen, from pure villenage, the consequence of manorial holdings.

State what you know of the origin and nature of manors ?

The term was derived from the latin word *Manerium*, which was the lord's residence. Manors were divided (1) into the *Terræ dominicales* or demesne lands, of which the lord held as much as he required for himself, his family, and servants ; (2) the tenemental lands, which were distributed amongst the tenants according to the tenures :—(i.) to the freehold tenant in perpetuity ; (ii.) to hold in villenage ; and (3) the waste land, consisting of the public roads, and common of pasture.

What was folkland ?

Folkland or pure villenage was a precarious and slavish tenure,

at the absolute will of the lord upon uncertain services of the basest nature. The villeins were divided into two kinds; (1) regardant; (2) in gross; the former belonging to the manor and assignable with it; the latter existing—separate and apart from the manor, but annexed to the person of the lord—and transferable by deed at will.

In process of time, and also by manumission, these villeins were allowed to hold their lands in a regular course of descent, and custom entitled them to hold against their lords, and by performance of their due services in spite of the lord's will; these customs being evidenced by entry on the court rolls; and by immemorial usage and admissions; hence, by tacit consent or encroachment, have arisen the modern copyholds or tenure by copy of court roll, at the will of the lord, but regulated according to the custom of the manor.

What are the incidents of lands held by copyhold tenure?

They are subject like socage lands to (1) fealty; (2) descent to the heir by custom; (3) heriots (the right the lord has to seize the best beast or other chattel on the tenant's death); (4) wardship; (5) reliefs; (6) forfeiture and escheat; and (7) fines upon descent or alienation, which are either, (i.) certain, *i.e.*, reasonable, or (ii.) arbitrary at the lord's will. Copyholds may be also turned into freeholds by enfranchisement.

What varieties of copyhold are there?

- (1.) Ancient demesne or villein socage.
- (2.) Customary freeholds.

What is privileged villenage or villein socage?

It is an exalted species of copyhold tenure upon base but certain services, subsisting only in the ancient demesnes of the crown, in the time of Edward the Confessor and William the Conqueror; whence the tenure is denominated tenure in ancient demesne.

What are the peculiarities of these copyholds of ancient demesne?

They have many immunities annexed to their tenure, *i.e.*, only the performance of the better class of villein services, now changed into monetary payments. They did not pay tolls or taxes, neither

could they be put on juries. They are still held by copy of court roll, according to the custom of the manor : though not at the will of the lord, and they require admittance to perfect their title.

What is customary freehold ?

It is a species of copyhold evidenced by the entry of the title on the court rolls ; it is held according to the custom of the manor, but not at the will of the lord, though the seisin is in him, and not in the tenant.

What is frankalmoign ?

It is a tenure by spiritual services at large, whereby many ecclesiastical and eleemosynary corporations now hold their lands and tenements, being of a nature distinct from tenure by divine service in certain. They did no fealty because of the exalted nature of their service.

CHAPTER VIII.

FREEHOLDS OF INHERITANCE.

What is an estate in lands, tenements, and hereditaments, and what may be considered to ascertain it ?

An estate in lands is derived from the Latin word *status*, and is such interest as the tenant hath therein. To ascertain which may be considered ; (1) the quantity of interest ; (2) the time of enjoyment ; (3) the number and connections of the tenants.

How is the quantity of interest of the tenant in the land measured ?

- (1.) He has either an estate for his own life or that of another person.
- (2.) It is vested in him and his heirs.
- (3.) It is circumscribed.
- (4.) It is infinite, viz., vested in the tenant and his heirs for ever.

How may estates be divided ?

From the last answer it will be seen that with respect to their quantity of interest or duration, they are (1) freehold, or (2) less than freehold.

What is a freehold estate in lands ?

An estate either of inheritance or for life, in lands of free tenure, and as such, was created and transferred by livery of seisin at the Common Law, or by what was equivalent thereto in tenements of an incorporeal nature.

How may freehold estates be divided ?

Into estates of inheritance, viz., fee simple, and fee tail ; or not of inheritance, viz., estates for life.

What is an estate of inheritance ?

One which the tenant is not only entitled to enjoy for his own life, but afterwards is cast by the law upon those who successively represent him *in perpetuum*, or in right of blood, according to the established order of descent.

What is a tenant in fee simple ?

A tenant in fee is he that hath lands, tenements, or hereditaments, to hold to him and his heirs for ever, generally absolutely and simply, not restricted to any particular kind of heir. A fee simple, therefore, or the inheritance of the lands, comprises the whole interest which a subject may possess in land, and the possession of the estate carries with it the invariable right of alienation. The word, heirs, is moreover necessary in the grant or donation.

How may estates of inheritance be subdivided ?

Into (1) absolute or fee simple, that is to say, free from all qualifications or conditions; and (2) limited; and the latter are again subdivided into (i.) qualified or base fees, and (ii.) fees conditional at the Common Law.

What is a qualified or base fee, and give an example ?

One which having a qualification subjoined thereto, is liable to

be defeated, when that qualification is at an end. As in case of a grant to A. and his heirs, tenants of the manor of Dale ; in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated.

What is a conditional fee ?

Such as is granted to the donee and the heirs of his body, in exclusion of collateral heirs.

Why were these estates termed conditional fees ?

Because they were held to be fees granted on condition that the donee had issue of his body, which condition being once performed by the birth of issue, the donee's estate was supposed to become absolute, at least for the following purposes :—

- (1.) To allow the tenants to alienate the land, which they took care to do as soon as they had issue, and they then repurchased, so as to obtain fee simples absolute.
- (2.) To forfeit it for treason.
- (3.) To charge it with incumbrances.

How did the statute of De Donis Conditionalibus affect these conditional fees ?

The statute *De Donis* (13 Edward I. c. 1), being passed to prevent such alienation, by enacting that from thenceforth the will of the donor be observed, and that the tenements so given to a man and the heirs of his body should at all events go to the issue, if there were any, and if not, revert to the grantor ; from the division of the fee by construction of this statute into a particular estate and a reversion, the conditional fees began to be called fees tail ; and it must be remembered that all tenements real, or savouring of the realty, are subject to entail.

Having regard to the statute of De Donis, was the alienation by the tenant in tail for the future void ?

No, it created what is technically called a *base fee*, that is, one which remained with the grantee as long as the alienor lived, or his heirs lasted.

What is an estate tail, and how may estates tail be divided and subdivided?

An estate tail is an estate limited to a man and the heirs of his body lawfully begotten. They are divided into estates tail general and special, and each of these is again subdivided into estates tail, male or female. Tail general we have defined. A tail special is where the gift is restrained to certain heirs of the donee's body, as by the body of a particular wife, and does not go to them all in general, analagous to the fee simple conditional. It must be remembered that the words "heirs of the body," i.e., words of procreation, are absolutely necessary to create a fee tail.

What is the effect of a gift to "a man and his heirs male" or "his heirs female"?

The necessary words of limitation have in these cases been used, but not the words of procreation; consequently, in both cases the grantee takes a fee simple, which will of necessity postpone the females in the second instance, in the event of there being any sons.

What were the inconveniences of these entails, and how might they be barred and otherwise affected?

Children grew disobedient when they knew they could not be set aside; farmers were ousted of their leases; creditors were defrauded of their debts.

Estates tail were first barred by the adoption of common recoveries in the 12th year of Edward IV., by Taltarum's case being brought before the court. They were also rendered liable to be forfeited for treason; they could also be leased and barred by fine; and lastly, they were rendered liable for debts to the crown, or of a bankrupt.

Tenants in tail might also appoint to a charity. By 1 & 2 Vict. c. 110, and 27 & 28 Vict. c. 112, estates tail have also been recently rendered available to judgment creditors for payment of their debts in a manner similar to that applicable to estates in fee simple.

How is an estate tail now barred, and what do you mean by the protector of the settlement?

Under 3 & 4 Will. IV. c. 74, by an ordinary deed of convey-

ance, technically called a disentailing deed, being duly executed by the tenant in tail, and inrolled in Chancery within six calendar months after execution. Where there is, however, a prior tenant for life, or for years determinable on life, whose estate is created by the same settlement, and on whose estate the estate tail is expectant, he is called the protector of the settlement, and his consent is necessary to the barring of the ultimate remainders; though without it the tenant in tail can alien for that species of estate before alluded to, viz., a base fee.

How does a tenant in tail now lease his estate?

Under the same Act of Parliament, 3 & 4 Will. IV. c. 74, for twenty-one years at a rack rent, or not less than five-sixths of a rack rent, and there is no necessity for such leases to be inrolled.

CHAPTER IX.

FREEHOLDS NOT OF INHERITANCE.

How are freeholds not of inheritance or for life only, divided?

- (1.) Conventional, or created by the act of the parties.
- (2.) Legal, or created by operation of law.

How are conventional estates for life created, and what are they?

They are created by express grant, or demise for the term of one's own life, or *pur autre vie*, or by a general grant without limiting any particular estate, as a grant to A. B.; this makes him tenant for life, because all grants are to be taken most strongly against the grantor.

What is the effect of an estate granted to a woman during widowhood?

It is a life estate, liable to be determined by the future contingency arising, before the life for which it is created expiring, *i.e.*, the marriage of the woman.

What are the incidents of these estates ?

(1) Estovers and the law of waste ; (2) right of leasing ; (3) emblements ; (4) relating to the under-tenants ; for the under-tenants or lessees meet with greater indulgence than their lessors, as regards emblements and also in the case of apportionment of rents.

What are estovers ?

Common of estovers, that is, necessaries (from *Estoffer*, to furnish) is a liberty of taking necessary wood for the use or furniture of a house or farm, from off another's estate. The Saxon word *bote* is used by us as a synonymous term.

In what position is a tenant for life as regards committing waste ?

He is not allowed to cut down timber, or do other waste upon the premises, except for the purpose of repairing houses or hedges, but he may continue the working of old mines, and make new shafts or pits in mines already open.

Define waste, and what are the various kinds ?

Waste, *vastum*, is a spoil or destruction of that which constitutes the corporeal hereditaments ; and is divided into (1) actual or voluntary, as cutting down timber, or (2) permissive, as allowing houses to fall to ruin.

What is the effect of a grant to a tenant for life "without impeachment of waste" ?

It gives him enlarged powers as to the committal of acts of waste, but he is still liable for equitable waste, which consists in pulling down the family mansion, cutting trees left standing for ornament, &c.

What powers have tenants for life to lease ?

Under 19 & 20 Vict. c. 120, they have power to lease for twenty-one years, subject to the provisions of the Act, their settled estate, as it is termed ; and they can also make permanent improvements by drainage or building suitable abodes for themselves.

Why are the executors of a tenant for life entitled to emblements or profits of the crops ?

Because of the uncertain nature of his estate and the maxim, *actus Dei neminem facit injuriam*. The representatives have the emblements to compensate for the labour and expense of growing them, &c., and also to encourage husbandry. The above rule, though, does not apply where the estate is determined by the tenant's own act.

But it must be remembered that the act of the tenant does not reach his under-tenant or lessee, who is a third person, and consequently not affected as far as the emblements are concerned.

How is the under-tenant affected by 14 & 15 Vict. c. 25 ?

Where his estate is determined by the death or cesser of the estate of the landlord, the tenant is not entitled to emblements, but holds on merely to the expiration of the then current year of his tenancy, and then quits on the usual terms, no notice being requisite from either party.

Is there any apportionment of rent now if the tenant die between two quarter days ?

Yes, by 11 Geo. II. c. 19 (applicable to tenancies not created by demise), at the instance of the executors or administrators, and by 4 & 5 Will. IV. c. 22, where there is a demise in writing.

And lastly by 33 & 34 Vict. c. 35, in cases of *all rents*, annuities, dividends, and other periodical payments in the nature of income, whether reserved in writing or otherwise.

What are the legal estates for life ?

- (1.) Tenancy in tail after possibility of issue extinct.
- (2.) Tenancy by the curtesy of England.
- (3.) Tenancy in dower.

Define a tenancy in tail after possibility of issue extinct ?

Where an estate is given in special tail and, before issue had, the person dies from whose body the issue was to spring, or having had issue such issue becomes extinct, whereupon the tenant, if surviving, becomes tenant in tail after possibility of issue extinct.

It must be remembered that the estate must be created by the act of God, and it partakes both of the incidents of an estate tail and those of an estate for life, because the tenant can commit all save equitable waste, and he and a tenant for life can mutually alienate their estates by exchange.

What is a tenancy by the curtesy of England?

Where a man's wife is solely seised of an estate of inheritance in possession, and he by her has issue born alive capable of inheriting her estate, he shall upon her death hold the tenements for his own life as tenant by the curtesy of England. In gavelkind lands, it might be mentioned, he is only entitled to curtesy in a half, determinable on his marrying again, but as a set-off to this no issue need be born.

What are the requisites to the curtesy?

- (1.) *Marriage*, which must be legal, and subsisting at the death.
- (2.) *Seisin* of the wife, which must be actual, not merely in law.
- (3.) *Issue* must be born alive.
- (4.) The *death* of the wife.

What is a tenancy in dower?

Where a woman's husband is solely seised of an estate of inheritance, of which her issue might by any possibility have been heir, and the husband dies, the woman is hereupon entitled to dower, or one-third part in value of the lands and tenements whereof he was seised at any time during the coverture, to hold for her natural life.

To what dower is a woman entitled in lands of gavelkind tenure?

To an estate in one-half of the lands, provided that she remains chaste and unmarried.

Who may be endowed?

- (1.) She must be the *actual* wife of the party at his decease, that is, she must not be divorced *a vinculo matrimonii*. A

divorce *a mensa et thoro*, or judicial separation only, will not destroy dower, even for adultery.

(2.) She must not be the wife of a traitor.

Of what may a widow be endowed ?

It depends entirely on the date of the marriage, that is to say, whether she claims under the ancient law or the present, viz., since 8 & 4 Will. IV. c. 105. A widow not coming within the Act is entitled to be endowed of all lands, tenements, and hereditaments of which her husband was solely seised for an estate of inheritance at any time during the coverture, and of which any issue which she might have had might by possibility have been heir, but she could not under the ancient law claim dower out of an equitable estate. By the above Act a wife's dower only extends to lands her husband dies seised of, and it is subject to his will and his debts, but it also applies to equitable estates and to a right of entry or action only.

What were the various kinds of dower ?

- (1.) Either at the Common Law,
- (2.) By special custom,
- (3.) Dower *de la plus belle*,
- (4.) *Ad ostium ecclesie* ; or
- (5.) *Ex assensu patris*.

In what manner may a woman be endowed ?

Her dower is to be assigned by the heir of her husband, or his guardian, during the forty days she remains in the mansion house after his decease. If the heir neglects, the sheriff may assign it. If the heir or his guardian assign more than he ought to have done, it may be remedied by writ of admeasurement of dower, and the sheriff is called upon to assign it. If the thing be divisible her dower must be set out by metes and bounds, if it is indivisible she must be endowed specially, as of the third presentation to a church, &c.

How may dower be barred ?

By (1) elopement ; (2) divorce ; (3) the treason of the husband ; (4) temporarily, by detaining title deeds or evidences of title from

the heir ; (5) by levying a fine or suffering a recovery under the old law ; (6) by deed duly acknowledged in case of women married since 1st January, 1834 ; and (7) by jointure as regulated by the statute 27 Hen. VIII. c. 10.

What is a jointure ?

Strictly speaking, a joint estate, limited to both husband and wife. Sir Edward Coke defines it as follows : "A competent livelihood of freehold for the wife of lands and tenements, to take effect in profit or possession presently after the death of the husband, for the life of the wife at least.

What are the requisites of jointure ?

- (1.) It must be limited to take effect immediately on the death of the husband.
- (2.) It must be for the wife's own life at least.
- (3.) It must be made to herself, and no other in trust for her.
- (4.) It must be made and so appear in satisfaction of her whole dower, and not of any particular part of it.

It might be observed that if the jointure is made after marriage, the wife has a right to elect between that and her dower.

What are the comparative advantages of dower or jointure ?

Tenants in dower by the old Common Law were subject to no tolls or taxes, neither could the king distrain for rent.

The widow may enter at once on her jointure. The assignment of dower is a tedious process.

Dower is forfeited by adultery or by the treason of the husband, not so jointure.

How did 3 & 4 Wm. IV. c. 105 affect the law of dower so far as the barring is concerned ?

As we have before seen, dower used to be barred by taking a conveyance to uses to bar dower. The method was as follows : a life estate was limited to the purchaser and after the determination of that estate by forfeiture or otherwise a remainder was limited to trustees during the life of the purchaser in trust for him, and after his death a remainder in fee was given to him. It may be seen that the intermediate estate of the trustee was sufficient to prevent

the husband having at any moment during his lifetime a fee simple in possession, and therefore his wife could claim no dower ; also by the aid of the Statute of Uses the husband was given a power of appointing the fee simple in such a manner as he might please, in priority to his own life interest and remainders where a marriage had taken place. But, since the date of the above Act, if it be the husband's wish, a simple declaration in the purchase deed, or in the husband's will, effectually debars the wife from her dower, and the land is subject to the husband's power of devising.

CHAPTER X.

ESTATES LESS THAN FREEHOLD.

What is the meaning of the term chattels, and how are they divided ?

The general word chattels, synonymous with the Latin word *catalla*, comprehends all things personal, including whatever wants either the duration or the immobility attending things real ; they are either (1) chattels real, or (2) chattels personal.

What are chattels real and chattels personal ?

Chattels real are such quantities of interest in things immoveable as are short of the duration of freeholds, being limited to a time certain, beyond which they cannot subsist. Chattels personal are things moveable which may be transferred from place to place together with the person of the owner.

Mention some of the principal distinctions between chattels real and freeholds of inheritance.

- (1.) "Livery of Seisin" was not requisite.
- (2.) The chattel real passed to the personal representative.
- (3.) The estate could be created *in futuro*.
- (4.) The tenant was merely possessed ; and
- (5.) A chattel cannot be entailed.

What are estates less than freeholds ?

There are three sorts ; (1) estates for years ; (2) estates at will ; (3) estates by sufferance.

What is an estate for years ?

It is an interest which a man has usually by deed in the possession of lands and tenements for some determinate period, as where lands and tenements are let to another for a certain period of time, which transfers the interest of the term, and the lessee enters ; this gives him possession of the term but not the legal seisin.

Why is an estate for years called a term ?

From the Latin word *terminus*, because it must expire at a certain period, or, in other words, its duration is limited.

Explain the meaning of the maxim id certum est quod certum reddi potest.

"That is certain which is reducible to a certainty." Therefore, a man may grant a lease to another for so many years as J. S. shall name, because when J. S. names the number of years, it is reduced to a certainty. If no day of commencement is named, it begins from the making or delivery of the lease.

How is an estate for years created ?

Originally by agreement, verbal or written, perfected by entry, but the 1st and 2nd sections of 29 Car. II. c. 3, require a lease for a term exceeding three years, or where less than two-thirds of a rack-rent is reserved, to be in writing ; and 8 & 9 Vict. c. 106, s. 8, requires such leases to be by deed. The estate is limited to a man, his "executors and administrators."

What are the incidents to a tenancy for a term of years ?

(1) Estovers, and (2) emblements, if the estate determines before the full end of the term—otherwise than by the tenant's own act—subject of course to 14 & 15 Vict. c. 25, before alluded to ; and (3) he is liable to waste.

What is an interesse termini ?

It is merely the right of entry in the tenements mentioned above.

It is assignable, and if the lessee dies before entry, the *interesse termini* passes to his executors.

What is an estate at will, and how is it created, and what are the incidents ?

Where lands are let by one man to another to hold at the will of both, and the lessee enters thereon.

The estate, if perfected by entry, may be created by (1) written agreement ; (2) verbally ; (3) construction of law.

The tenant is entitled to emblements, unless he determine the tenancy, and he is liable for voluntary waste.

What amounts to a determination of the tenancy ?

(1) Express determination of the lessor's will by notice ; (2) the exertion of any act of ownership by the lessor, as entering upon the premises and cutting timber ; (3) making a lease for years, to commence immediately ; (4) by lessee's committing waste or any act of desertion, as assigning his estate, or (5) the death or outlawry of either lessor or lessee.

What have tenancies at will of late been held to be, and what notice to quit is necessary ?

Tenancies from year to year, as long as both parties please, especially where an annual rent is reserved.

Six months' notice to quit is necessary, expiring with the current year of the tenancy.

How may a tenancy from year to year be created ?

- (1.) By express agreement, which may be by parol if the term do not exceed three years, and two-thirds of a rack rent is at least reserved, otherwise by deed.
- (2.) By presumption of law, as where the tenant is in possession of land, paying rent.

For what length of time must a tenancy for one year certain, and so on from year to year, endure ?

For two years certain, because the notice to quit cannot be given until the middle of the yearly tenancy, which does not com-

mence till the year certain has expired, and such notice must expire with the current year of the tenancy.

What are the incidents of a tenancy from year to year ?

- (1.) Notice to quit, because the tenancy is not determined by death.
- (2.) Waste generally, either voluntary or permissive, except in the case of a house, when the tenant seems merely liable to keep it wind and water tight.

What is an estate at sufferance ?

When one comes into possession of land by lawful title, but keeps it afterwards without any title at all, as in the case of a lessee holding over after the determination of the lease.

It may be remembered that no one can be tenant at sufferance as against the sovereign, because the crown cannot be guilty of *laches*.

How can a tenant at sufferance be got rid of ?

By 4 Geo. II. c. 28, after demand made and notice in writing given by the landlord, the tenant forfeits double the yearly value of the lands, and by 11 Geo. II. c. 19, if the tenant gives notice to quit, and holds on after the expiration of such notice, double the yearly rent. See also 1 & 2 Vict. c. 74, and 19 & 20 Vict. c. 108, s. 50.

CHAPTER XI.

OF ESTATES UPON CONDITION.

What is an estate upon condition, and how are such estates divided ?

An estate upon condition, which may or may not be freehold, is of two sorts : (i.) on condition implied : (ii.) expressed, under which last may be included : (1) estates held in *vadio*, gage or pledge : (2) estates by statute merchant or statute staple : and (3) estates held by *elegit*.

What is an estate upon condition implied?

Where a grant of an estate has from its essence and constitution a condition inseparably annexed to it though none be expressed in words, as, a grant to a man of an office generally.

What is an estate upon condition express?

Where an express qualification or condition is annexed to the grant of an estate on the performance or breach of which condition, either expressed or implied, the estate so granted shall either (1) commence : (2) be enlarged, or (3) be defeated.

Distinguish between conditions precedent or subsequent?

“Precedent,” are such as must happen or be performed before the estate can vest or be enlarged: as where an estate is limited to A. upon his marriage with B. “Subsequent,” are such upon the failure or non-performance of which an estate already vested may be defeated.

As a grant of an estate in fee simple, reserving a rent, if the rent be not paid it shall be lawful for the grantor to re-enter.

What is an estate created by way of conditional limitation, and distinguish between conditional limitations and estates depending on a condition subsequent?

Where an estate is so expressly confined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail, as when land is granted to a man so long as he is parson of Dale; here the estate determines as soon as the contingency happens. In the case of a condition subsequent, the grantor must enter in order to take advantage of the breach.

Can the right of entry on breach of a condition subsequent be reserved in favour of a stranger?

No, it cannot; only in favour of the grantor and his heirs, neither could it until the year 1540 have been assigned; but by 32 Hen. VIII. c. 34, the grantee of the reversion upon a lease for years or for life by indenture, has the same power of re-entry upon breach of the covenants running with the land contained in the lease as the lessor or his heirs.

Under what circumstances are express conditions void ?

(1) If they become impossible at the time of their creation, or afterwards become impossible by the act of God or the feoffor himself; or (2) if they be contrary to law; or (3) repugnant to the nature of the estate. In the above cases if they be conditions *subsequent*, the estate becomes absolute in the tenant; not so, naturally, in the case of a void condition *precedent*, because the estate can never vest.

What are estates held in vadio, in gage or pledge, and how may they be subdivided ?

Estates in *vadio*, or in pledge, are estates granted as a security for money lent, being (1) in *vivo vadio*, in living gage, where the profits of the land are granted till a debt is paid, upon which payment the grantor's estate will revive. (2) In *mortuo vadio*, in dead or mort gage, which is, when a man borrows of another a certain sum, an estate is granted either in fee or for a less period on condition to be void at a day certain, if the grantor then repays the money borrowed with interest, on failure of which the estate becomes absolutely dead to the grantor. A proviso or contract that if the money be repaid on the particular day the mortgagee should then at the request of the mortgagor reconvey the property mortgaged is now substituted for the conditions defeating the estate granted.

What is an equity of redemption, and how is it obtained ?

It is a right the mortgagor has to redeem his mortgaged estate upon payment of the principal, interest, and costs of the mortgage. It is obtained in Chancery by calling upon the mortgagee to reconvey upon the above terms; or, if he is in possession, that an account may be taken as to rents and profits and the mortgage money and expenses, and that upon payment of the balance, if any, the mortgagee may reconvey.

What is meant by the term "foreclosure" ?

Foreclosure is the right which the mortgagee has to retain the mortgaged estate in default of payment for ever as against the mortgagor when the debt has remained unpaid for an unreasonable

time, or the mortgagor has been guilty of fraud, as mortgaging his property twice over; or the estate may be sold.

Within what time may a mortgagor redeem his estate?

Within twenty years after payment of any principal or interest, or a written acknowledgment of the mortgagor's right by the mortgagee, if in possession. See 3 & 4 Will. IV. c. 27, 1 Vict. c. 28.

What are estates held by statute merchant and statute staple?

They are both securities for debts acknowledged to be due, the former, entered into before the chief magistrate of some trading town pursuant to the statute 13 Edw. I. stat. 3, *De mercatoribus*; the latter pursuant to the statute 27 Edw. III. stat. 2 c., before the mayor of the "Staple." They were only originally permitted amongst traders. The lands were delivered to the creditor till the profits discharged the debt, in addition to the trader being imprisoned and his goods seized.

What is an estate of elegit?

It is a writ founded on the 13 Edw. I. c. 18 (Statute of Elegit), whereby after the plaintiff had obtained judgment for his debt the sheriff used to give him possession of a moiety of the defendant's freehold lands and tenements, to be held until the debt and damages were fully paid. The creditor was called a tenant by elegit, and by 1 & 2 Vict. c. 110 the whole of the debtor's lands can now be taken.

CHAPTER XII.

ESTATES IN POSSESSION, REMAINDER, AND REVERSION.

What are estates with respect to the time of their enjoyment, and how are they subdivided?

They are either (i.) in immediate possession or (ii.) expectancy, and of the latter there are two kinds, (1) one created by the act of parties, called a remainder, (2) by act of law, and called a reversion.

What is an estate in possession?

It is sometimes called an estate executed, "whereby a present interest passes to and resides in the tenant, not depending on any subsequent circumstance or contingency," as in the case of estates executory. It does not mean that the owner has the *actual* but only the legal possession.

What is an estate in reversion, and what the usual incidents?

The residue of an estate left in the grantor to commence in possession after the determination of some particular estate granted by him; as, if there be a gift in tail, the reversion of the fee is without any special reservation vested in the donor by act of law. To which are incident—(1) fealty, and (2) rent, but the latter is not necessarily incident to the reversion.

What is the particular estate?

It is the precedent estate to the reversion,—so called as being only a small part or *particula* of the inheritance.

What do you know of the law of merger? Are there any exceptions?

When a less and a greater estate limited subsequently meet in one and the same person in the same right without any intermediate estate intervening, the less is said to be merged in the greater.

There are two exceptions to the rule, (i.) a fee tail never merges in a fee simple, being constructively excepted by the statute of De Donis, and (ii.) a base fee never merges in a reversion, by 3 & 4 Will. IV. c. 74.

What is an estate in remainder? Give an example.

It may be defined as an estate limited to take effect and be enjoyed after another estate is determined, both estates being limited by the same deed at the same time; as, if a man seised in fee simple grants lands to A. for his life, and after the determination of that estate, then to B. and his heirs for ever,—here A. is tenant for life, remainder to B. in fee. It must however be remembered that no remainder can be limited after the grant of an estate in fee simple, because the fee simple is the largest estate that can possibly be enjoyed in real estate; consequently a remainder cannot be reserved after the whole is disposed of.

What is the distinction between reversions and remainders?

(1) A reversion arises by construction of law, a remainder by act of parties, *i.e.*, by either deed or devise; (2) there is no tenure between the owner of the particular estate and the remainder-man, but there is between the owner of the particular estate and the reversioner.

What are the rules for the creation of a remainder?

- (1.) There must be a particular estate precedent to the remainder.
- (2.) The remainder must pass out of the grantor at the creation of the particular estate.
- (3.) The remainder must vest in the grantee during the continuance or at the determination of the particular estate.

How may remainders be divided, and define each class?

Remainders are, (1) vested, when the estate is fixed to remain to a certain person after the particular estate is spent, such as we have just treated of; (2) contingent, where the estate is limited to take effect either to an uncertain person or upon an uncertain event,

What are the rules for the creation of contingent remainders ?

- (1.) Contingent remainders of freehold require a particular estate of freehold to support them.
- (2.) They must vest either during the continuance of the particular estate or *eo instanti* that it determines.

Contingent remainders were very liable to destruction ; how were they subsequently protected ?

By limiting an estate in remainder expectant on the particular life estate to trustees for the natural life of the tenant for life upon trusts to preserve the contingent remainder. This, being a vested remainder, was always ready to come into possession when the particular estate should determine by forfeiture or otherwise than by death, and prevented the possibility of the ultimate estates becoming united in possession as long as there was a possibility that the contingent estate might arise.

What do you understand by the term Strict Settlement ?

It was the method by which estates were, as far as possible without infringing the rule against perpetuities, continued in the same family by settling it as follows : to A. the head of the family for life, remainder to B. the eldest son (usually a bachelor at the date of the settlement) for life with remainder ; after the determination of these estates by forfeiture or otherwise, to trustees during the life of B. upon trust to preserve contingent remainders, with remainder to the eldest and other sons successively in tail, with remainder to C. another son of A. for his life, and so on.

Would a right of entry support a contingent remainder ?

Yes, because it is not necessary that the particular estate should be absolutely in possession.

How are contingent remainders affected by 8 & 9 Vict. c. 106, s. 8 ?

Contingent remainders are capable of taking effect notwithstanding the determination by forfeiture, surrender, or merger of the particular estate.

What do you know of the rule in Shelley's case? Give an example.

Where the ancestor by any gift or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is limited either *mediately* or *immediately* to his heirs in fee or in tail, the word heirs are words of limitation of the estate, and not of purchase. In other words it means that the ancestor's estate enlarges into a disposable fee simple or fee tail as the case may be, and that the heirs take nothing by such gift itself unless such an estate is allowed to descend to them.

An example of a mediate gift would be a grant to A. for life with remainder to B. for life, with remainder to the heirs of the body of the said A.

How has the law of reversionary interests been protected by 6 Anne, c. 18 and 31 Vict. c. 4?

By 6 Anne c. 18 the Court of Chancery has power to order the production of the *cestui qui vie* on the application of the person in remainder or reversion, and if such order be not complied with the party shall be taken to be dead and the person in expectancy may enter.

The latter statute enacts that a *bonâ fide* sale of a reversion cannot now be impeached on the ground of under value, but only for fraud in the management of the sale.

CHAPTER XIII.

ESTATES IN SEVERALTY, JOINT TENANCY, CO-PARCENARY, AND COMMON.

How may estates be held with respect to the number and connection of their tenants?

(1) In severalty ; (2) in joint-tenancy ; (3) in co-parcenary ; and (4) in common.

What is an estate in severally?

It is where any tenant holds it in his own sole right without any other person being joined with him.

What is an estate in joint tenancy?

Where lands or tenements are acquired by two or more persons by the same title, other than by descent; and at the same time; to hold in fee simple, fee tail, for life, for years, or at will;—in which case the law construes them to be joint tenants, unless the words of the grant expressly exclude such construction.

What are the properties of an estate in joint tenancy?

(1) Unity of interest; (2) of title; (3) of time; and (4) of possession. They are also seised *per my et per tout*, and, therefore, upon the decease of one joint tenant the whole interest remains to the survivor.

Distinguish between a joint tenancy and a tenancy by entireties?

As we have just said joint tenants are said to be seised *per my et per tout*, meaning the possession is not only of a part but also of the whole. Each has an undivided moiety of the whole, and not the whole of the undivided moiety.

Husband and wife are *tenants by entireties*, because being considered as one person in law they cannot take the estate in shares, but both are seised of the entirety *per tout et non per my*. The consequence of which is that if an estate is conveyed to the husband and the wife and a third person, the husband and wife take one moiety and the third person the other.

What do you understand by the doctrine of survivorship?

It means that the entire tenancy upon the decease of any of the joint tenants remains to the survivors or survivor by reason of the entirety of interest. This right of survivorship is called the *jus accrescendi*, and the maxim is *jus accrescendi præfertur oneribus ac ultimæ voluntati*. Hence no curtesy or dower can be claimed out of a joint estate, neither can a joint tenant make a will.

How may a joint tenancy be destroyed?

By destroying any of its constituent unities in either of the following ways, viz :—

- (1.) By partition.
- (2.) By alienation without partition.
- (3.) By accession of interest.

What would be the result were one of three joint tenants to alienate his share?

The two remaining tenants still hold their shares by joint tenancy with survivorship, and the alienee holds as tenant in common. The same result would ensue were one of three joint tenants to release his share to one of the others. The joint tenancy is destroyed with regard to the share released, which is held in tenancy in common, but the two other parts are still held in joint tenancy.

What is an estate in co-parcenary, and how does it arise?

Where lands of inheritance descend from the ancestor to two or more persons, who are called parceners, and all together make but one heir, the estate arises (1) by common law, or (2) by particular custom :—by common law, where a person's next heirs are two or more females ; by particular custom in cases of gavelkind, where the lands descend to all the males equally.

How does an estate in co-parcenary differ from a joint tenancy?

- (1.) Co-parceners claim by descent, joint tenants by purchase.
- (2.) There is no unity of time.
- (3.) There is no entirety of interests.
- (4.) There is no equality of interest.

What do you know of the law of Hotchpot?

“ Hotchpot is derived from a word signifying a pudding, because in a pudding is not commonly put one thing alone but with other things together.” And the idea arose as follows : if one of the daughters had an estate given with her in *frankmarriage*, if lands descended to her from the same ancestor in fee simple she or her heirs had no share of them, unless they agreed to divide the lands in *frankmarriage* with the rest of the lands descending.

How do you dissolve an estate in co-parcenary?

(1) By partition; (2) by alienation; and (3) by the whole descending to and vesting in one person.

Why are these co-heirs called co-parceners?

From the fact that they could always be compelled to make partition, which could have been done by the following methods:

- (i.) By consent. (1) By agreement; (2) by the choice of a friend; (3) where the eldest divided and chose last; (4) by casting lots.
- (ii.) Compulsorily, by writ of partition.

It might be mentioned that if an advowson descends in co-parcenary, and the sisters cannot agree in the presentation, the eldest and her issue, and even her husband, shall present alone before the younger.

What is a tenancy in common, and what are its properties?

Where two or more persons hold lands possibly by distinct titles and for distinct interests but by unity of possession, because none knows his own severalty; there is therefore a possession without survivorship, the seisin being *per my* and not *per tout*, but no necessary unity of title, time, or interest, either as regards equality or entirety.

How may a tenancy in common be created?

- (1.) By dissolving the constituent unities of the two former tenancies.
- (2.) By express limitation in a deed.

What are cross remainders?

They generally arise when property is given to two or more persons as tenants in common in tail, with a proviso that, in the event of the death of one in the lifetime of the others without leaving issue, his share shall go to the survivor or survivors and *vice versâ*.

They can only be granted by deed or will, and are never implied in the former.

How may a tenancy in common be dissolved?

- (1.) By uniting the several titles in one tenant; and
- (2.) By partition of the land,

CHAPTER XIV.

USES AND TRUSTS.

Distinguish between uses and trusts?

A use is the beneficial ownership of the property, such as the right to the rents and profits, or, in fact, that estate which is now transmuted into possession by the Statute of Uses; whereas a trust was the confidence reposed in the legal tenant of the land that he should dispose of it as thereby directed, or according to the wishes of the *cestui que use*.

How and when was the notion of a use transplanted into England?

By the foreign ecclesiastics towards the close of the reign of Edward III. as a means of evading the Mortmain Law, and also of facilitating the devise of lands by dying penitents, by obtaining grants, not to the religious houses directly, but *to the use* of those religious houses. But 15 Richard II., c. 5 enacted that uses should for the future be subject to the Statutes of Mortmain, and forfeitable like the lands themselves, unless the licence of the Crown was first obtained.

What was the result of the introduction of uses?

That they were adopted with considerable readiness by all people, particularly as they, (1) removed the restraint on alienation by will; (2) as to their creation, transfer, and interest, they entirely disregarded other technical doctrines of tenure; and (3) were not forfeited for treason or felony.

How was a use created?

- (1.) By express agreement or declaration.
- (2.) By implication, as in the case of a resulting use.
- (3.) By mere contract, express or implied, as a covenant to stand seised, bargain and sale, &c.

What kind of property may be granted to a use?

All kinds, both corporeal and incorporeal, save, as regards the

latter, those which are annexed to the possession and *quæ ipso usu consummuntur*, i.e. rights of way or common.

What is a resulting use ?

One which results back again to the grantor himself by implication because either there is no consideration for it, or the trust for which it was limited is too indefinite, it being naturally considered in the Courts of Chancery that the feoffor intended merely to benefit himself.

Could any one hold to a use ? how was his estate affected ?

All persons except, (1) aliens; (2) persons attainted; (3) the sovereign; (4) a corporation aggregate.

The estate of the feoffee to uses possessed the ordinary incidents of tenure, and was consequently liable to (1) descent; (2) alienation; (3) forfeiture; (4) execution for debts; (5) escheat; (6) dower or curtesy.

What were the properties and advantages of uses in Equity ?

- (1.) They might be secretly created or assigned between the parties or be demised.
- (2.) They were not liable to any of the feudal burdens as regarded the creation, transfer, or interest.
- (3.) They did not escheat for felony or other defect of blood.
- (4.) Dower and curtesy could not be claimed; and,
- (5.) They were not liable for the debts of the *cestui que use*.

What were the inconveniences attendant on the doctrine of uses, and how were they ultimately obviated ?

"A man who had cause to bring an action knew not against whom to bring it; the wife was defrauded of her thirds, the husband of his curtesy, the lord of his wardship relief, &c., and the poor tenant of his lease." To obviate these, abundant statutes were passed treating the *cestui que use* as real owner of the estate, and at length the object was entirely effected by the statute 27 Hen. VIII. c. 10, which enacted that where any person was seised of lands, &c., to the use, confidence, or trust of any other person, the person entitled to the use should thenceforth be seised of the land, &c., in the like estates as they had in the use,

The statute thus executes the use; hence if a conveyance be made to A. to the use of B. the latter takes both the legal and equitable estate.

What are the essentials necessary to bring the statute into operation?

- (1.) The word *seised*, being the single word used in the statute, excludes from its operation copyholds and leaseholds.
- (2.) The statute requires that a man should be *seised to the use of another* and not to the use of himself merely; and,
- (3.) The statute will only execute a use so far as there is a corresponding *seisin*.

What are the rules of the Common Law Courts as regards uses?

- (1.) A use cannot be limited on a use.
- (2.) The statute only executes a passive and not an active use.

How were trusts introduced, and distinguish between active and passive trusts?

Having regard to the fact that the statute did not execute the uses referred to in the last answer, Courts of Equity determined to give effect to them under the name of trusts, because they were in reality trusts in equity, which were binding, and ought to be performed.

An active trust is where lands are given to a man and his heirs in trust to receive and pay over the profits to another; a passive trust is where the *cestui que use* is allowed to receive the rents and profits himself.

Define a trust, and distinguish between executory, executed, express, implied, and resulting trusts?

A trust may be defined as a confidence reposed by one person in another to do a certain act. An executory trust is one which is not formally and finally declared by the instrument creating it as an executed trust is, but which is merely contained in a stipulation or direction to carry it out by a future instrument. An express trust is one which is clearly expressed by the author thereof, or may be

fairly collected from the terms of a written document. An implied trust is one which is founded on an unexpressed but presumeable intention. And a resulting, which is in reality an implied trust, is one which results to the grantor by implication.

Who may be a trustee ?

Any person capable of holding land ; and further the Court of Equity never wants a trustee ; it will either take it upon itself to carry out the trust, or follow the legal estate and decree the holder to do so.

What is the position of the trustee at law ?

He is merely the instrument of conveyance ; but the trust (1) descends ; (2) may be aliened ; (3) is liable to debts ; (4) forfeiture and other incumbrances, but not to escheat ; (5) dower and curtesy.

What are the principal provisions of the Trustee Act of 1850, 13 & 14 Vict. c. 50, and 15 & 16 Vict. c. 55 ?

They enact that where a trustee is a lunatic or leaves the country, or refuses to convey, or dies intestate, or is an infant, &c., &c., the Court of Chancery may make an order vesting the lands in any other person, which order operates as a valid conveyance.

What is the nature of the estate of the cestui que trust ?

The rules applicable to legal estates are generally adopted by the Courts of Equity. It (1) may be either for life, or in tail ; (2) in possession or expectancy ; (3) merger applies ; (4) the rule in Shelley's case ; (5) it is subject to curtesy or dower ; (6) it is liable to judgment debts.

But there is no escheat of a trust estate, nor is there any forfeiture for felony.

How must a trust be created or transferred ?

By 29 Car. II. c. 3 every declaration, assignment, or grant of any trust in lands or hereditaments, except such as arise from implication or construction of law, must be made in writing and signed by the party, or by his will. In practice conveyances

applicable to the legal estate are usually adopted, but this is not absolutely necessary. If writing is used and duly signed to satisfy the above statute, and the intention to create or transfer is clear, it is quite sufficient.

What is the meaning of a term upon trust to attend the inheritance?

Long terms of years are sometimes created for various purposes, principally for raising money. Should the purposes of the term be satisfied it was advisable to keep it on foot, because it protected purchasers from mesne incumbrances (*i.e.* incumbrances created since the creation of the term), of which they had had no notice. So the purchaser got it assigned from the trustee to new trustees of his own choosing "*in trust to attend the inheritance.*"

How has it been affected by Statute?

This assignment is now rendered unnecessary, for by 8 & 9 Vict. c. 112, sect. 1, all satisfied terms which were attendant on the 31st December, 1845, are to cease and determine on that day, unless made expressly attendant on the inheritance, and by the 2nd section all terms being satisfied and attendant after the 31st December, 1845, are determined immediately on their becoming so attendant.

CHAPTER XV.

TITLE IN GENERAL.

How may an estate in land be acquired?

(1) By descent or the act of the law, and (2) by purchase or the act of parties.

What is a title by act of law, and what is included in the term?

Where the title is vested in a man by the operation of the law without any interference of his own; it includes (1) descent; (2) escheat; (3) dower; (4) curtesy.

What is a title by purchase, and what are the various kinds ?

Where the title is vested in a man by his own act and agreement, it includes (1) occupancy ; (2) forfeiture ; (3) conveyance.

CHAPTER XVI.

TITLE BY DESCENT.

What is descent ?

The means whereby a man, on the death of his ancestor, acquires a title to his estate, in right of representation as his heir at law.

What is the meaning of the maxim nemo est hæres viventis, and distinguish between an heir apparent and an heir presumptive ?

"No one can be heir of a living person." An heir apparent is a person who is bound to succeed to his ancestor's estate, assuming he survive, as the eldest son. An heir presumptive, is one who would be the heir were his ancestor to die at that particular moment, but who may be ousted by the birth of a subsequent and nearer heir, as in the case of a daughter being postponed to an after-born son.

What is the law of descent founded on ?

On custom, tracing back as far as the reign of Henry II., fairly perfected in the reign of Edward I., and undergoing no change until the Inheritance Act, 3 & 4 Wm. IV. c. 106.

What is the first rule of descent, and explain the word purchaser ?

(1.) Descent shall be traced from the purchaser, which word includes every one entitled, who did not inherit.

What alteration in the law was introduced by the above rule ?

The old rule was that the descent was traced from the person last seised ; "*seisinâ facit stipitem*," being the maxim.

What is meant by the term consanguinity, and what are the various kinds?

It is the connection or relationship of persons descended from the same stock or common ancestor. It is—(1) Lineal where one of the kinsmen is lineally descended from the other; (2) Collateral where they are lineally descended, not one from the other, but both from the same common ancestor.

What is the effect of a devise to a man's heir eo nomine?

By 3 & 4 Will IV. c. 106, s. 3, in case of such a devise by a testator dying after the passing of the Act (31 Dec., 1833), the heir would take by purchase, and not by descent.

What is the second rule of descent?

(2.) Inheritances lineally descend to the issue of the purchaser *in infinitum*.

State the third rule. Whence do the law of primogeniture and the preference of males to females derive their origin?

(3.) Children of the purchaser are preferred to their issue, but males to females. Where there are two males of equal degree, the eldest inherits; females altogether. The law of primogeniture seems to have sprung from the custom of the Jews, amongst whom the eldest son took a double portion of the inheritance, as also amongst us he had, in the time of Henry I., the principal fee of his father. Again, the inconveniences of splitting the fee were severely felt in cases of titles of nobility; consequently, the eldest son invariably began to succeed. The preference of males to females was probably derived from the feudal system, because no woman could ever succeed to a feud, she being incapable of military service.

What is the fourth rule of descent? Distinguish between succession per stirpes and per capita?

(4.) The lineal descendants *in infinitum* of the purchaser represent the ancestor, that is, stand in the same place as he would have done had he been living, subject of course to the last rule. Succession *per stirpes* is taking by the roots, that is to say, that each branch take the same share as the root they represent. *Per*

capita is taking share and share alike as next of kin of the deceased without reference to the stock of descent.

What is the fifth rule of descent ; and what alleration has it effected in the law of descent ?

(5.) On failure of issue of the purchaser the nearest lineal ancestor inherits, assuming there be no issue of a nearer lineal ancestor existing.

An ancestor was never capable of being heir before the introduction of this rule of descent; the land would formerly have escheated rather than it should ascend.

What was the reason that originally inheritances were never allowed to ascend ?

Because of the feudal law. Feuds or fees were held in three ways ; (1) as a *feudum antiquum* ; (2) as a *feudum novum* ; (3) as a *feudum novum ut antiquum*. In the first instance as the son was presumed to have inherited from his ancestor, the father must have been dead before the fee could have passed by him to the son. If it was a *feudum novum* the ancestor could not succeed to it, because of the feudal maxim, *Hæreditas nunquam ascendit*, founded on the rule that the heir must be of the blood of the purchaser, and on the fact that the lords did not wish for decrepit vassals. If it were a fee of the third class, viz., *ut antiquum*, he would be excluded by the reason first mentioned.

State the sixth rule of descent ?

(6.) Among lineal ancestors of the purchaser the paternal line is preferred to the maternal, whether of the purchaser himself or of any ancestors, male or female.

What is the seventh rule of descent, and what branch of the inheritance does the rule embrace ?

(7.) Assuming the ancestor mentioned in the fifth rule to die before the purchaser, his issue represent him *in infinitum*, in the same manner as the issue of the purchaser; but inasmuch as this rule embraces collateral relations, those of the whole blood are preferred to those of the half.

What alteration has been effected by the latter rule?

This last rule introduced considerable alteration, because previously the half blood could never inherit; the lands would have escheated rather.

Explain the meaning of the maxim "Possessio fratris facit sororem esse hæredem?"

If a man married twice and had a son and a daughter by his first wife and a son by the second, and died intestate, and then his son died, the daughter of the first marriage would be heir, because she was whole blood to the purchaser, in preference to the son by the second.

How can a man acquire land by purchase under a limitation to "the heirs" or "heirs of the body" of one of his ancestors?

A conveyance of lands to B. for life, with remainder to his "heirs" or "heirs of his body." Whoever is the heir of B. at his death, takes a remainder by purchase; but by the 4th section of 3 & 4 Will. IV. c. 106 if the conveyance be dated after, or the will be of a testator who died after 31st December, 1833, the land descends, and the descent is traced as if the ancestor named had been the purchaser.

How has 22 & 23 Vict. c. 35, s. 19, affected the law of inheritance?

By enacting that where there is a total failure of heirs of the purchaser (under which circumstances the land would formerly have escheated) the descent is to be traced from the person *last entitled*, as if he had been the purchaser.

What do you understand by breaking the descent?

Simply that where an estate which has descended in one particular line as *ex parte maternâ*, is sold by one of the parties, or is devised by his will, the old line of descent is broken, and the purchaser or devisee becomes the new *propositus*.

How far does an estate in fee simple descending on the heir come to him charged with the debts of the ancestor, and does the liability extend to a devisee?

So far as specialty—that is to say, judgment debts, and debts

arising by deed are concerned—to the extent of assets by descent, with the distinction that in deeds in which the ancestor has not bound his heir, he is only liable in Equity, and then only so far as he has assets.

This rule did not formerly apply to devisees, but by the conjoint operations of earlier statutes, and subsequently by 3 & 4 Will. IV. c. 104, all the real estates which a person dies seised of and has not charged with his debts, are considered as assets to be administered in the Courts of Equity for payment of the simple contract as well as specialty debts ; and by 32 & 33 Vict. c. 46, in the administration of the estate of any person dying from and after the 1st Jan. 1870, specialty debts have no priority as to payment over simple contract debts ; but no lien, charge, or other security which the creditor may hold is affected.

CHAPTER XVII.

TITLE BY ESCHEAT.

What is the meaning of the word escheat, and in what cases does it arise, and how is the title perfected ?

The word is derived from the French “Echoir” meaning to happen ; hence escheat may be said to arise by chance or accident. The estates fall back to the lord of the fee either (1) by default of heirs ; or (2) for want of disposition. Entry by the lord is required to complete his title.

How are escheats divided ? and define each kind.

(1.) *Propter defectum sanguinis.*

(2.) *Propter delictum tenentis.*

The former may be defined as where upon the death of a tenant in fee simple there is no person capable of inheriting who can claim title to the land either by descent or devise.

The latter where the tenant's blood is corrupted by attainder.

Into what classes are escheats propter defectum sanguinis divided?

- (i.) Where the tenant dies without heirs.
- (ii.) Where he dies without heirs capable of inheriting as (1) monsters ; (2) bastards ; (3) aliens.

What is the present law relative to aliens?

By 33 Vict. c. 14, as regards titles accruing after 12th May, 1870, all real and personal property may be acquired and disposed of by an alien in the same manner as a natural-born British subject, and a title derived through, or in succession to an alien as if he had been such a subject.

What is attainder? and distinguish between attainder and forfeiture to the Crown.

Attainder was where the blood of the tenant, by the commission of any felony, including treason, was held to be corrupted, and the original donation of the feud, which was *dum bene se gesserit*, broken.

Forfeiture of lands was part of the old Saxon law not relating at all to the feudal system, but it was a prerogative of the Crown. Escheat therefore operated subordinately. Again, forfeiture only applied to existing estates. Attainder corrupted the blood, and the tenant could not inherit in the future ; and he also obstructed the channel of descent. Again, the Crown may remit the forfeiture, but an Act of Parliament is required to remove corruption of blood.

How has the doctrine of corruption of blood or attainder been gradually removed?

- (1.) By 54 George III., c. 145, save in the case of treason or murder.
- (2.) By the 10th section of 3 & 4 Will. IV. c. 106, a pre-deceased attainted relation does not obstruct the channel of descent unless the estate had escheated before 1st January, 1834.
- (3.) By 13 & 14 Vict. c. 60, trust property is unaffected by the attainder of the trustee ; and

- (4.) By 33 & 34 Vict. c. 23, after the passing of that Act no judgment for any treason or felony shall cause any attainder or corruption of blood, or any forfeiture or escheat.

CHAPTER XVIII.

TITLE BY OCCUPANCY.

What is occupancy, and to what instance is it confined?

The taking possession of those things which before had no owner; it only applies to the case of a tenant *pur autre vie* (that is, one who holds for the life of another) dying in the lifetime of that other or the *cestuis que vie*, as he was called. Here the first person who could enter held the land, and was styled "general occupant."

What is a quasi entail?

Where the estate *pur autre vie* is granted to a man and the heirs of his body. It is barred in the same way as an ordinary estate tail save that enrolment is not required.

What is the law at the present day?

The doctrine of general occupancy is abolished, and the property made devisable; if not devised, the heir enters as *special occupant* subject to his ancestor's debts; otherwise the lands go to the personal representatives subject to the debts of the deceased, the balance to be divided amongst the next of kin as personal estate.

Who is the owner of a corporation sole in the case of death?

The law until a successor be appointed, and then his title relates back to the death of his predecessor.

Who is entitled to a new island, and to land gained from the sea by alluvion or dereliction?

The Crown. As to the land gained from the sea, it depends

whether the dereliction, &c., be a sudden thing or not ; if not the owner of the land behind gets the benefit ; if sudden the Crown.

How would it be if the circumstances last mentioned took place in a river ?

The island would belong to the nearest riparian owner, and the rule of riparian owners follows the last rule of alluvion and dereliction in the last answer, except in cases of a flood.

CHAPTER XIX.

TITLE BY FORFEITURE.

What is forfeiture, and what are the various kinds ?

It is a punishment annexed by law to some illegal act or negligence of the owner of things real, whereby the estate is transferred to another, who is usually the party injured, or to the Crown.

The various kinds are :

(1) By Mortmain ; (2) alienation contrary to law ; (3) disclaimer.

What is an alienation in mortmain ?

A conveyance of lands to a corporation, of whatever sort it may be, either (1) sole ; (2) aggregate ; (3) ecclesiastical ; or (4) temporal.

How far is a corporation capable of purchasing lands ?

Conveyances cannot be made to corporations unless they have a licence from the Crown, and then it is made "to them and their successors."

What do you know of the statute De Religiosis ?

The large doweries that were showered upon religious houses without obtaining the above licence, led to a statute passed in the

reign of Henry III., which made them void ; but this only extended to religious houses ; bishops and the other sole corporations were not included in it ; hence the statute *De Religiosis*, 7 Ed. I. stat. 2, which prevented any person, religious or otherwise, buying, selling, or receiving under colour of a gift, any lands or tenements in mortmain, under pain of forfeiture.

What are the principal Acts relative to the relaxation of Mortmain ? and state shortly what they enact.

By 9 Geo. II. c. 36 no lands, &c., or money to be laid out thereon, shall be given for any charitable uses whatsoever unless by deed indented, executed in the presence of two witnesses twelve calendar months before the death of the donor, and enrolled in the Court of Chancery within six months after its execution (except stocks in public funds, which may be transferred within six months previous to the owner's death), unless the gift be made to take effect immediately and without power of revocation. There are also exceptions in favour of Oxford and Cambridge, the public schools of Eton, Winchester, and Westminster, the British Museum, &c., and the death of the donor within the year will not affect the matter in case of a sale the money being paid down at or immediately before the execution of the conveyance. The other Act is 24 Vict. c. 9, which allows reservations of nominal rents, mines, provisions of re-entry on breach of covenant, to view the position of roads, streets, and adjacent buildings, and allows the consideration in the case of a sale to consist of a rent, assuming the same benefits are reserved to the representatives of the grantor as the grantor himself.

There is also 34 Vict. c. 13, the Public Parks Act.

It will be seen that the tendency of the above enactments is to prevent estates being given to charities by will, as people on their death-beds are more liable to influence.

What was the effect of alienations by particular tenants for greater estates than the law permitted ? Give examples.

When the conveyance was one at Common Law they were forfeited to the person in remainder, as in the case of a tenant for life alienating his estate by feoffment ; but supposing a tenant in tail aliened in fee, he did not forfeit his estate, but merely caused a *discontinuance*, which the issue might avoid by entry.

How has forfeiture on alienation now been materially affected ?

By the abolition of fines and recoveries by 3 & 4 Will IV. c. 74, and also by the 4th section of 8 & 9 Vict. c. 106 enacting that from and after the 1st October, 1845, no feoffment should have a tortious operation.

What is a disclaimer?

It is the denial to hold of any lord, by a tenant who has had an action brought against him by his lord for refusing to render him proper services, or claiming to have in the estate a larger interest.

CHAPTER XX.

TITLE BY ALIENATION.

What is the most usual title to real estates ?

By alienation, or conveyance, or purchase in its more limited sense, which is a means of transferring real estates, wherein they are voluntarily resigned by one man and accepted by another.

What was and what is the present law on alienation ?

Alienation by the tenant could not originally take place without licence from his lord ; nor even with the consent of the lord, unless he had also got consent from his immediate heir ; neither could the lord alien without the consent of his tenant, which was called attorning. By various Acts of Parliament, the above restrictions wore off, and as a general rule all estates are now freely transferable, unless granted with a special stipulation to the contrary.

Who may alien ?

All persons are capable of purchasing, and all that are in possession of any estates are capable of conveying them, unless under peculiar disabilities by law, such as—

(1.) Attainted persons, who could purchase lands, but were

- disabled to hold as against the Crown and the lord, and were incapable of conveying.
- (2.) Corporations, *i.e.*, religious or municipal.
 - (3.) Idiots and insane persons, whose feoffments are void and voidable.
 - (4.) Infants, whose conveyances are void and voidable.
 - (5.) Married women, who may purchase and convey with the consent of their husbands.
 - (6.) Aliens, subject to 33 Vict. c. 14.

How has the position in this respect of a married woman been affected by statute ?

By 3 & 4 Will. IV. c. 74, a married woman may, with the concurrence of her husband, dispose of her real estate by deed duly acknowledged, after having been first separately examined, and a certificate of the acknowledgment must be duly enrolled in the Common Pleas. And by 8 & 9 Vict. c. 106, s. 7, conformably to the above provisions, a married woman may disclaim.

What is the position of an alien ?

He is, as we have before seen, in the position of a natural-born British subject, assuming he acquired his estate after the passing of 33 Vict. c. 14. But he cannot be the owner of a British ship or any part of her. Neither is he qualified for any parliamentary or other franchise.

State shortly the legislative provisions which have removed the other incapacities not before alluded to.

By various statutes the Lord Chancellor or the committees and guardians are empowered to execute conveyances on the lunatic's and infant's behalf.

By 19 & 20 Vict. c. 120, amended by 21 & 22 Vict. c. 77, and 27 & 28 Vict. c. 45, the Court of Chancery, upon petition in the ordinary way, allows leases and sales of settled estates with the consent of the trustees of unborn children, and the guardians and committees of infants and lunatics ; and these powers shall only be exercised where they seem consistent with the rights of the parties under the settlement and there is no contrary intention expressed.

Why is it necessary that a transfer of property should be properly evidenced ?

In order to avoid disputes (1) as to the fact of transfer ; (2) the persons by whom it was made ; (3) what was transferred ; or (4) for what estate and interest.

How may a man alien ?

By common assurances or conveyances.

CHAPTER XXI.

OF DEEDS.

What is a deed, and why is it so called? What are the different kinds ?

A writing sealed and delivered by the parties, so called from the Latin word *factum*, on account of its solemnity and authenticity.

(1) Deeds indented or indentures ; (2) Deeds poll.

Mention some of the peculiarities of deeds.

- (1.) A man is always estopped by his deed, that is, prevented from contradicting it.
- (2.) A deed merges a simple contract on the same subject-matter.
- (3.) An instrument under seal can only be varied, &c., by another under seal.

Distinguish between an indenture and a deed poll.

An indenture is so called from the Latin words *Instar dentium*, because the top was cut like teeth or saw-wise. The deeds poll were shaved quite even. But now by 8 & 9 Vict. c. 106 an indenture is to have the effect of one though not actually indented.

What are the requisites of a deed ?

- (i.) Sufficient and capable parties, and a proper subject-matter.

- (ii.) Writing or printing on paper or parchment, and duly stamping.
- (iii.) Legal and orderly parts, which are usually (1) the *Premises* ; (2) the *Habendum* ; (3) *Tenendum* ; (4) the *Reddendum* ; (5) the conditions ; (6) the warranty formerly inserted ; (7) the covenants ; (8) the conclusion, including the date.
- (iv.) Reading if required.
- (v.) Sealing, and in many cases signing it also.
- (vi.) The delivery ; and
- (vii.) The attestation.

What do the premises contain ?

- (1.) The names and titles of the parties.
- (2.) The recitals, if any.
- (3.) The consideration.
- (4.) The certainty of the grantor and grantee as well as of the thing granted.

Can a stranger to a deed take the benefit of a condition in it ?

By 8 & 9 Vict. c. 106, s. 5, he can, that statute enacting that an immediate estate and interest in any hereditaments, and the benefit of a covenant or condition respecting them, shall be taken though the taker be not named as a party.

Are there any words which imply a covenant for quiet enjoyment ?

"Give," "grant" and "demise" originally did, but by 8 & 9 Vict. c. 106, s. 4, none of these words in a deed executed after 1st October, 1845, imply any covenant except so far as they may by any Act of Parliament.

What do you mean by a covenant running with the land ?

Where the benefit or burden of the covenant passes to the assignee of the land so long as he is in possession.

What is an escrow ?

A deed delivered to a third party to hold until some condition be performed on the part of the grantee, when such delivery takes effect absolutely.

How may a deed be avoided?

- (i.) *Ab initio* by wanting any of the aforesaid requisites.
- (ii.) *Ex post facto*, by (1) rasure or alteration ; (2) defacing its seal ; (3) cancelling it ; (4) disagreement of those whose consent is necessary ; and (5) by decree of the Court.

What is the meaning of the word consideration, and how many kinds are there ? What is a voluntary deed ?

The word means the price or motive for which the thing is done.

There are two kinds ; (1) valuable, such as money or marriage or the like ; (2) good, which is natural love and affection.

A voluntary deed is one made without any consideration, or only a good one ; it is good as between the parties, but by 27 Eliz. c. 4 void as against subsequent purchasers with or without notice ; and in this respect deeds differ from simple contracts, which if there be no consideration, are entirely void. And by 13 Eliz. c. 5, voluntary conveyances are void against creditors if the grantee was indebted to the extent of insolvency at the time.

How are deeds to be construed?

- (1.) According to the intention rather than the words, "*Verba intentioni debent inservire.*"
- (2.) No extraneous evidence is admissible to explain an ambiguity.
- (3.) Upon the entire deed, so as to give effect to it as a whole, and not upon disjointed portions.
- (4.) Favourably "*Ut res magis valeat quam pereat.*"
- (5.) When anything is granted, the means of enjoyment pass by implication ; "*Quando lex aliquid concedit, concedere et id sine quo res ipsa esse non potest.*"
- (6.) In cases of repugnant clauses the first is received.
- (7.) Ambiguous words are to be taken most strongly against the grantor ; "*Verba chartarum fortius accipiuntur contra proferentem,*" except as regards the Crown.

CHAPTER XXII.

CONVEYANCES AT THE COMMON LAW.

In earlier times what were the two classes of conveyances ?

- (i.) By matter *in pais*, later on termed ordinary, and subdivided into (1) conveyances at Common Law ; and (2) by Statute Law.
- (ii.) By matter of record.

What are the conveyances at Common Law ?

- (i.) They are either original or primary ; and include (1) a feoffment ; (2) grant ; (3) lease ; (4) exchange ; (5) a partition ; or
- (ii.) Secondary or derivative, *i.e.*, presuppose a conveyance precedent, and only given to enlarge, restrain, or confirm, &c. They include (1) release ; (2) confirmation ; (3) a surrender ; (4) an assignment ; (5) a defeasance ; (6) lease and release.

What is a feoffment, and how perfected ? State any incidents which may occur to you.

It is derived from the verb *feoffare* or *inféudare*, to give one a feud, and is applied to conveying an estate of freehold in possession in a corporeal hereditament. The words are "*Do*" or "*dedi*," attended with livery of seisin, or delivery of bodily possession, and which is of two kinds ; (1) in deed, which is performed on the land ; (2) in law, in sight of the land.

Since 1st October, 1845 (8 & 9 Vict. c. 106, s. 3), no feoffment made after that date, save a feoffment made under custom by an infant, is good unless made by deed ; and by the 4th section of the same act, no feoffment has any longer a tortious operation, that is to say, conveys a greater estate than the grantor has.

What is the proper term applicable to a conveyance of an estate tail or an estate for life ?

Strictly speaking the former is called a gift ; the latter a demise or lease, because a feoffment can only technically pass the fee.

What is a grant, and how made?

It is a conveyance effected by mere deed ; the operative words are "*dedi et concessi*." It is applicable to all estates in expectancy, incorporeal hereditaments, and also to the transfer of hereditaments incorporeal ; *i.e.*, rents, commons, advowsons ; and by 8 & 9 Vict. c. 106, a conveyance by grant is now made applicable to all kinds of hereditaments ; formerly, it must be remembered, corporeal hereditaments were said to lie in livery, incorporeal in grant.

What is a lease or demise, and how effected?

A conveyance of lands &c. generally, with a reservation of a rent for life or years or at will, usually for a less term than the lessor has therein ; for if it is for the whole time, it is an assignment.

The proper operative words are "*Demisi, concessi, et ad firmam tradidi*," "demise, lease, and to farm let." The lease must, by 29 Car. II. c. 3. ss. 1, 2, be in writing, if for a term exceeding three years, or at a less rent than two-thirds improved value ; and since 8 & 9 Vict. c. 106, s. 3, where the Statute of Frauds requires writing, the later statute requires a deed.

It must be remembered that agreements to lease even for a shorter term than three years, must be in writing by the 4th section of the statute, these being included in the phrase "Interest in Lands."

What is an exchange, and how made?

An exchange is the mutual conveyance of equal interests the one in consideration of the other, and must, except in the case of copyholds, by 8 & 9 Vict. c. 106, be by deed perfected by entry, which must be made on both sides ; and it must be remembered that since the 1st October, 1845, an exchange made by deed does not imply any condition at law.

What is a partition, and how made?

The division of an estate held in joint-tenancy, in coparceny, or in common between the respective tenants, so that each may hold his distinctive share in severalty. By 8 & 9 Vict. c. 106, partitions of all hereditaments (not being copyhold), made after 1st October, 1845, must be made by deed.

What is a release, and how effected?

It is the discharge or conveyance of a man's rights in lands or tenements to another that has some former estate in possession therein. A deed is necessary, except when the release operates by implication of law, but no livery of seisin. The proper word is "release."

How may releases enure?

- (1.) By enlargement of an estate should the releassee be in possession, and there be privity of estate.
- (2.) Passing an estate where there is privity of estate, as in case of coparceny.
- (3.) By passing a right, as in case of a disseisin.
- (4.) Extinguishments, *i.e.*, release of the reversion.
- (5.) Entry and feoffment, as in the case of a release to one of two joint disseisors.

What is a confirmation, and how made?

The conveyance of an estate or right *in esse*, whereof a voidable estate is made sure, or a particular estate is increased.

The operative words are "have given, granted, ratified, approved, and confirmed." Livery of seisin is not requisite, but a deed is essential, unless the confirmation be implied by law.

What is a surrender, and how effected?

It is the yielding up of an estate for life or years to him that hath the immediate remainder or reversion wherein the particular estate may merge.

The operative words are "hath surrendered, yielded, and granted up." There is no livery of seisin required. But a surrender, by 8 & 9 Vict. c. 106, s. 3, made after 1st October, 1845, must, unless arising by operation of law or of a copyhold interest, be by deed.

What is now the effect of the surrender of a lease for the purpose of renewal before the expiration of the original term on the underlease?

The underlease is, by 8 & 9 Vict. c. 106, s. 9, kept alive, and also the remedies of the landlord, for where such an event happens after the 1st October, 1845, the estate which shall for the time

being confer, as against the tenant under the same lease, the next vested right to the same hereditaments shall as regards the incidents to, and obligations on, the reversion which would have subsisted, but for the surrender thereof, be deemed the reversion expectant on the same lease.

What is an assignment? how does it differ from a lease, and how is it made?

An assignment is the transfer or making over to another of the whole right one has in any estate, but usually in a lease for life or years. It differs from a lease in that, in the latter, a man simply grants an estate less than his own, consequently he has the reversion; whereas in an assignment you part with your entire interest. The original lessee is liable on all the covenants in the original lease, even though he assign it; but he is entitled to an indemnity from the assignee, who, in his turn, is entitled to the benefits of or liable on the covenants running with the land so long as he continues in possession. In the case of an underlease, which is where the lessor assigns for a shorter term than his own, the underlessee is a stranger to the original landlord, because there is no privity of estate or contract. The proper operative words are "assign, transfer, and set over;" and by 8 & 9 Vict. c. 106, s. 3, an assignment of a chattel interest not being copyhold made after 1st October, 1845, is void at law unless made by deed.

What is a defeazance, and in what cases was it used?

A defeazance, derived from the French word *défaire*, is a deed of the same antiquity as the grant, calling back the estate granted on certain conditions being performed; it usually occurred in mortgages, but now is very rare.

State what you know of a lease and release.

A lease was usually for a year, completed by entry of the lessee, who was then in the position to accept a release of the reversion, and thus he became owner of the fee without livery of seisin.

CHAPTER XXIII.

CONVEYANCES UNDER THE STATUTE OF USES.

What are the methods employed for creating uses under the statute ?

(1) A feoffment to uses ; (2) covenant to stand seised ; (3) bargain and sale ; (4) lease and release ; and (5) grant to uses.

At what period were the last-mentioned conveyances brought into use ?

The first three before and at the date of the passing the Statute of Uses ; the other two owe their present operation to the statute. They were found universally useful in conveyancing, because the estate could be conveyed by a secret deed, by bargain and sale, or covenant to stand seised, and, as we have before seen, these conveyances were free from the restrictions and modifications of the Common Law.

What is a feoffment to uses ?

Simply the ordinary feoffment we have already discussed, with a further limitation to uses.

Such as a feoffment to A. to the use of B.

What is a covenant to stand seised ?

It arises where a man seised of lands covenanted, in consideration of blood or marriage, that he will stand seised of the same to the use of some relative. It is never used in conveyancing on account of its restricted application.

What is a bargain and sale, and what was its chief recommendation ?

It is a kind of real contract, whereby the bargainer for some pecuniary consideration bargains and sells, that is, contracts to convey, the land to the bargainee, and thus becomes trustee for or seised to the use of the bargainee, and the Statute of Uses transfers the use into possession.

Its chief recommendation was its secrecy, for it passed an estate of freehold without livery of seisin; but by 27 Hen. VIII. c. 18, bargains and sales of freeholds were for the future to be by deed indented and enrolled within six months in one of the Superior Courts at Westminster, or before the *Custos Rotulorum* of the county.

This species of conveyance would, however, confer an estate for years without entry. No particular form of words is necessary either for a bargain and sale or a covenant to stand seised.

What is a lease and release?

It consists of two parts—(1) a bargain and sale; (2) a Common Law release. It was introduced shortly after the Statute of Enrolments last mentioned, because it was found it only spoke of bargains and sales of freeholds of inheritance; consequently the lands were bargained and sold for the term of one year, and then a release of the reversion was taken; thus doing away with the necessity of entry. 4 & 5 Vict. c. 21, however, enacted that every instrument purporting to be a release of a freehold estate, and expressed to be made in pursuance of the Act, shall be as effectual as a lease and release.

What is a grant to uses?

Simply a grant of corporeal hereditaments with limitations to uses. The seisin created by 8 & 9 Vict. c. 106, and the use executed by the Statute of Uses.

What are the peculiarities of conveyances under the Statute of Uses?

- (1.) There must be a seisin and a use expressed or implied; consequently the statute does not apply to leaseholds.
- (2.) A corporation aggregate cannot adopt them.
- (3.) The word heirs must be inserted; and
- (4.) They apply to estates in possession, reversion, and remainder, and also involve the doctrine of vested and contingent remainders.

What latitude is allowed to conveyances under the Statute of Uses?

- (1.) A man in this way can indirectly take an estate by his

own conveyance and convey to someone else to the use of his wife.

- (2.) An estate may be made to spring up *in futuro* independently of any preceding estate, by what is termed a springing use, *e.g.*, a covenant to stand seised.
- (3.) By means of a shifting use a fee can be limited on a fee, the second being in derogation of the first.
- (4.) By powers of revocation and new appointment, a man can reserve to himself, or confer on anyone else, the power of revoking or altering a grant.

What are the every-day instances of powers of revocation and new appointment, and why are they so called?

(1) Leasing ; (2) jointuring ; (3) selling and changing land into money.

They are so called because new dispositions, not authorised by the conveyance, act as revocations of what is therein contained.

What is the limit for an executory interest to vest so as not to infringe the law against perpetuities?

An executory use must vest during any number of existing lives in being, and twenty-one years afterwards, allowing a further period for gestation at the end of the twenty-one years.

What are the principal provisions of Thellusson's Act, 39 & 40 Geo. III. c. 98?

That *income of* property shall not be accumulated for a longer period than—(1) the life of the grantor, settlor, devisor, or testator ; or (2) twenty-one years after his death ; or (3) during the minority of any person living or *en ventre sa mère* at the death of the grantor or testator ; or (4) during the minority of the person who if of full age would have been entitled.

It must be borne in mind that there are exceptions to this Act in cases of—(1) the produce of timber or woods ; (2) portions for younger children ; (3) payment of debts ; and if the accumulation exceeds Thellusson's Act, it is only void for the excess so long as it does not exceed the original rule against perpetuities.

CHAPTER XXIV.

CONVEYANCES BY TENANTS IN TAIL, ETC.

Having regard to the conveyances lately mentioned, how far could a tenant in tail or married woman pass their estates by them in their simple form ?

They are only applicable to a tenant in tail so far as leasing his estate for twenty-one years goes, and to a married woman to enable her to dispose of her separate estate.

Whence arose these incapacities of conveyance, and how were they formerly removed ?

The former from the statute of *De Donis*, the latter, which is a personal one, from the Common Law. These incapacities were formerly removed by fines and recoveries, which branch of the Law has been entirely remodelled by 3 & 4 Will. IV. c. 74, the Statute for the Abolition of Fines and Recoveries, and the substitution of more simple modes of assurance.

What were fines and recoveries ?

Fictitious suits, both commenced in the Court of Common Pleas. The former being compromised in progress of the suit, and only barring the issue; the latter carried on to judgment and execution, and barring reversioners and remainders. Originally actions at law for recovery of land, they were afterwards adopted as a means of transfer between friendly litigants.

What was a fine ?

A fine, or, as it is sometimes called, a feoffment of record, was an amicable composition or agreement of an actual or fictitious suit, whereby the estate in question was acknowledged to be in the right of one of the parties, so called because it put an end not only to the particular suit, but all others in the same matter.

What were the parts of a fine ?

(1.) The writ of covenant on which was due the Primer Seisin.

- (2.) The license to argue the suit, on which was due the Post Fine or King's Silver.
 - (3.) The concord.
 - (4.) The note of the fine.
 - (5.) The foot of the fine.
- To which 4 Hen. IV. c. 24, added (6) Proclamations.

What were the various kinds of fines ?

There were four kinds, viz :—

- (1.) *Sur cognizance de droit come ceo que il ad de son don*, or an acknowledgment of the right of the cognizee as that which he hath of the cognizor. It was a feoffment of record.
 - (2.) *Sur cognizance de droit tantum*, an acknowledgment of right merely. This was generally used to pass the reversionary interest of the cognizor.
 - (3.) *Sur concessit*, where the cognizor, to end all disputes, though without acknowledging any precedent, yet granted to the cognizee an estate *de novo*.
- And (4.) *Sur don grant et rendre*, which was a double fine, comprehending the 1st and 3rd, used to create particular cumulations of estate.

What were the force and effect of fines ?

- (1.) When levied by such as had themselves any interest in the estate, to assure the lands in question to the cognizee by barring the respective rights of parties (even married women, the fine being levied with their husbands' consent), privies, and, when levied with proclamations, strangers, if not under any legal disability.
- (2.) A fine levied by the tenant in tail with proclamations barred the *issue in tail*.
- (3.) A fine *sur cognizance com ceo*, if levied by a tenant in tail with or without proclamation, *discontinued* the entail.
- (4.) The last-mentioned fine, when levied by a tenant for life, worked a forfeiture, and if for a greater estate

then he was legally entitled to, destroyed the expectant contingent remainders if any.

What was a common recovery, and how was it suffered?

A common recovery, as we have seen, differed from a fine in that it was carried through all the stages of the suits to judgment and execution. It was commenced by an actual or fictitious suit, or action for land brought against the tenant of the freehold, who thereupon vouched another who undertook to warrant the tenant's title; but upon such vouchee making default the land was recovered by judgment at law against the tenant, who in return obtained judgment against the vouchee to recover lands in equal value as recompense.

What was the effect of double and treble vouchees?

Simply to bar latent rights and interests of the tenant himself, and also distant remainders.

What were the force and effect of recoveries?

- (1.) To assure lands to the recoverer by barring estates tail, and all remainders and reversions expectant thereon; provided the tenant in tail either suffered or was vouched in such recovery.
- (2.) Recoveries bound married women when parties, with their husbands' consent.
- (3.) When suffered by tenants for life they worked a forfeiture and destroyed the expectant contingent remainders.

How might the uses of a fine or recovery be directed?

- (1.) By deeds to lead such uses, which were made previous to the levying or suffering them.
- (2.) Deeds to declare the uses which were made subsequently.

How is an estate tail now barred?

Under 3 & 4 Will. IV. c. 74, by a simple deed executed by the tenant in tail, and enrolled in the High Court of Chancery within six calendar months, the consent of the protector, where the estate tail is in remainder, being first obtained.

Whence did the idea of a protector of the settlement arise? Why was it continued? And who is now the protector?

From the fact that a tenant in tail in remainder could not bar his entail without the consent of the person in whom the freehold was vested. The office was continued because it was thought that having to obtain the consent of an older tenant would be a check on the liability of a young tenant in tail under a family settlement being influenced to bar his entail as soon as he was twenty-one.

The protector is usually the first tenant for life; but the settlor has power to appoint any number not exceeding three persons to be together protector of the settlement; but it must be remembered that the protector must be appointed by the same settlement as the estate tail, and that his office is a purely personal one, and consequently not destroyed by a transfer of the estate by which it was acquired.

What estate is created if a tenant in tail bars his entail without the consent of the protector of the settlement?

A base fee: that is to say, he bars his own issue merely, and not those in reversion and remainder.

Who is protector in the case of a lunatic or a married woman, or a person under any other disability?

In the first case, the Lord Chancellor, or other the person for the time being having, by virtue of the Queen's sign manual, the care of the persons and estates of lunatics.

In the case of a married woman, her husband, unless the estate is settled to her separate use; and in case of attainted persons, the Court of Chancery.

How is the protector's consent to be given?

Either by the same deed barring the entail, or by a separate one to be executed at or before the execution of the former and duly enrolled.

Do the provisions of 3 & 4 Will. IV. c. 74, as to barring, apply to equitable as well as legal estates tail?

They do; and also to money directed to be invested in land, and when so invested settled in tail; save that where the trust

estate consists of money or leaseholds, the intended estate tail is barred by a deed of assignment merely duly enrolled.

Who cannot bar their estates tail?

- (1.) Tenants *ex provisione viri* could not formerly when that estate was in existence.
- (2.) Tenants of lands given by the Crown as a reward for public services as long as the reversion continues in the Crown.
- (3.) Tenants in tail after possibility of issue extinct.

How does a married woman now pass her interest in real estate?

By deed executed with her husband's concurrence, and duly acknowledged before a judge of one of the superior courts or of a county court or two commissioners; and a certificate of the acknowledgment, verified by affidavit, must be filed in the Common Pleas.

CHAPTER XXV.

THE CONVEYANCE BY DEVISE.

What is a will or testament and a codicil?

The legal declaration of a man's intentions which he wills to be performed after his death.

A codicil, derived from the Latin word *codicillus*, is a supplement to a will containing any addition, explanation, or revocation of the will, and executed and attested in the same manner.

Trace the power of devising from the Conquest to the present time.

Before the Conquest there is no doubt that lands were devisable by will. Naturally, on the introduction of the feudal system, there was a restriction put on the power of devising, for no estate greater than a term of years could be devised except in Kent and a few ancient burghs, and some particular manors. Then came the devise of the use, until the Statute of Uses, and then the Wills Act,

32 Hen. VIII. c. 1, explained by 34 & 35 Hen. VIII. c. 5, which allowed devises of all lands except copyholds (by reason of the alteration of tenures by 12 Charles II. c. 24), so long as the devise was in writing, signed by the devisor in the presence of three or four credible witnesses. And lastly the Wills Act, 1 Vict. c. 26, which allows all persons, except married women and infants, to dispose of all their estate to which they are entitled at their death, including estates *pur autre vie* and all contingent executory and future interests, as also rights of entry; and as to the devisees, there is no restriction except as regards corporations, who take subject to the Mortmain Acts; and the statute (1 Vict. c. 26) includes after-acquired lands.

How must a will be executed?

All wills made on or after 1st January, 1838, must be in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and the signature is to be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses are to attest and subscribe the will in the presence of the testator, though no special form of attestation is necessary.

Previously to this statute, publication and writing only were required by 32 Hen. VIII. c. 1, and then by the Statute of Frauds writing, signature by the testator, and three attesting witnesses at least.

What are the rules as to the competency of witnesses?

- (1.) A will is not void on account of the incompetency of the witness to prove the execution.
- (2.) If any person attests the execution of the will to whom or to whose wife or husband any beneficial interest is given, the devise, &c., is void; but the witness is competent to prove the will.
- (3.) A creditor may attest the will without losing his rights, even though the will contains a charge for payment of debts; and
- (4.) Executors are competent witnesses to a will.

Previously to the above rules, the will was void for the want of proper witnesses, except so far as protected by 25 Geo. II. c. 6.

How may a will be revoked and revived?

- (1.) By marriage, and in the case of a man no birth of issue is now required; and there is an exception in favour of a power of appointment over property which would not, if unappointed, have passed to the testator's representatives.
- (2.) By another will or codicil duly executed.
- (3.) By a writing executed in the like manner as a will declaring an intention to revoke; and
- (4.) Burning or destroying, *animo revocando*.

And it must be remembered that when revoked a will can only be revived (1) by re-execution; (2) by a codicil stating an intention to revive.

What is the effect of obliterations or alterations in a will after execution?

They have no effect unless executed almost in the same manner as an original will, *i.e.*, the name of the testator and the attesting witnesses placed opposite them in the margin or at the foot and referred to in the attestation.

Mention some cases of a latitude of construction being allowed in the case of wills?

- (1.) A fee may be devised without words of inheritance, and a tail without words of procreation.
- (2.) Estates pass by mere implication in a will.
- (3.) Cross remainders may also be implied in wills.
- (4.) In case of inconsistent clauses in a will, the last prevails.
- (5.) A greater laxity is allowed in respect of description.

State the rules for the construction of wills?

- (1.) Devises and bequests speak from death in the absence of a contrary intention.
- (2.) When no words of limitation are added, the whole intention of the testator passes.
- (3.) With a few exceptions depending upon the words of the will, trustees take the fee simple.
- (4.) No lapse takes place in the case of a devise or bequest to the child or other issue of the testator or of an

estate tail or *quasi* entail to a stranger, assuming issue are left at the death of the testator, and in the latter case, capable of inheriting, and such lapses now fall into the residue.

- (5.) General devises pass customary copyholds and leaseholds.
- (6.) A general devise operates as an execution of a general power of appointment.
- (7.) The words "dying without issue" do not as heretofore mean an indefinite failure, but only a want of issue in the lifetime or at the death of such person.

What is an executory devise ?

Such a disposition of lands by will that no estate vests thereto at the death of the deviser, but only upon some future contingency without any precedent particular estate to support it.

How have secret conveyances and wills been guarded against in Middlesex and Yorkshire ?

Save in cases of leases for twenty-one years or under, or at rack rent with possession, unless a memorial (*i.e.*, a *précis*) of a prior deed or conveyance is registered, before conveyances under which subsequent mortgagees claim, they are void as against such subsequent purchasers ; so also in the case of wills applicable to those two counties unless registered within six months after death.

CHAPTER XXVI.

CONVEYANCES BY MATTER OF RECORD.

What are conveyances by matter of record, and in what cases do they arise ?

They are where the sanction of some court of record is called in to substantiate and witness the transfer of real property. They are—(1) Private Acts of Parliament ; (2) Royal grants.

What gave rise to private Acts of Parliament?

The ingenuity of some people and the carelessness of others possibly loaded an estate with contingent remainders, resulting trusts, and springing uses, beyond the relief or reach of law or equity. The above species of assurances were consequently called in, calculated to give (by the transcendent power of Parliament) such reasonable powers or relief.

How do private Acts of Parliament differ from public?

- (1.) They were not printed or published, like the latter.
- (2.) They were liable to be relieved against when obtained by fraud.
- (3.) Until the 4th Feb. 1851, they were not judicially noticed unless specially pleaded; but now, by 13 & 14 Vict. c. 21, s. 7, they are, unless the contrary be expressed in the statute.

What are Royal grants, and how are they effected?

They are contained in charters or letters patent, and are entered on record for the dignity of the Royal person and the security of the Royal revenue. They apply only to a few incorporeal hereditaments, such as dignities, offices, &c.

By 14 & 15 Vict. c. 82, a warrant addressed to the Lord Chancellor is first prepared by the Attorney or Solicitor General, setting forth the tenor of the intended letters patent; it is then signed with the Queen's own sign-manual and countersigned by the principal Secretary of State, and afterwards sealed with her Majesty's Privy Seal.

How do grants by the Crown differ from that of a subject?

- (1.) They are to be construed most favourably for the Crown.
- (2.) Nothing is included save the bare grant as expressed.
- (3.) Where the Crown is deceived or mistaken, or the grant is informal, it is void *ab initio*, the validity of the Crown grant being questioned by *scire facias*.
- (4.) Royal domains cannot be granted for a longer period than thirty-one years.

CHAPTER XXVII.

COPYHOLDS.

What is the general nature of copyholds ? .

- (1.) They only arise in manors.
- (2.) They are regulated by immemorial customs of the particular manor.
- (3.) Entails can only be granted by special customs, the statute *De Donis* not applying to copyholds.
- (4.) Dower and curtesy also depend upon custom, the former therein called free bench.
- (5.) The Statute of Uses does not apply to copyholds, but estates may be limited *in futuro*, a fee limited on a fee, and a husband may convey to his wife.
- (6.) Copyholds are devisable by will.

What is a copyholder strictly speaking, and supposing a copyhold be granted to a man and the heirs of his body, there being no custom in the manor to entail, what is the effect ?

A copyholder strictly speaking is only a tenant at will.

In the event of a grant as above, as the statute *De Donis* does not apply to copyholds, the grantor will simply create an estate analogous to the old fee simple conditional.

How does a copyhold estate differ in its incidents from a freehold one as to the estate ?

- (1.) A copyholder cannot commit waste, save by special custom ; neither can the lord enter for that purpose without the consent of the tenant.
- (2.) The tenant forfeits his estate by alienations applicable to freeholds without the lord's consent, by refusing proper services or disclaimer.
- (3.) They are subject to quit rents, fines, (1) certain ; (2) arbitrary (by custom never allowed to exceed two years improved value), and heriots.
- (4.) Formerly they were not assets in the hands of the heir or

devisee, neither could they be extended by *elegit*; this, however, has been remedied by 3 & 4 Will. IV. c. 104, and 1 & 2 Vict. c. 110.

- (5.) Assuming the lord and the tenant to possess estates of fee simple respectively in manor and copyhold, copyholds may be enfranchised.

How are fines respectively paid by tenants in common, joint tenants, and co-parceners?

By tenants in common apportionably, joint tenants and co-parceners, a single fine for all; with regard to joint tenants, the first pays a full fine, *i.e.*, two years' value on his life; and the second, half that; and the third half that, and so on *ad infinitum*.

What is a heriot, and what are the various kinds?

A heriot, now in most manors converted into a money payment, is a right of the lord, on the death or alienation of the tenant, to enter and seize the best beast or other chattel of which the tenant was the owner at his decease; it must be remembered that it is always a personal chattel, and should the tenement be divided, the heriot is necessarily multiplied.

Heriots are of two kinds: (1) heriot service, due on a special reservation of a lease or grant; (2) depend on immemorial custom.

How do copyholds differ as regards title?

- (1.) They are incapable of direct alienation by any of the direct methods applicable to freeholds.
- (2.) A demise may be effected with the lord's consent for a term of years; without, for one year only; and the indulgence of the lord allows alienation to any extent, under the mask of a surrender and admittance.

How is a surrender and admittance taken?

Either in or out of Court, generally before the steward or his deputy, by delivering up a rod or glove which is duly accepted; then the new tenant or surrenderee also comes into court, or before the steward or his deputy, and by the like symbol is admitted to the lands, taking the oath of fealty and paying a fine.

What is a surrender, and how does the fact affect respectively the estates of surrenderor and the surrenderee?

A surrender is a manifestation of the lord's intention. The surrenderor takes the profits and discharges the services, but he is in reality only in a position of trustee: he cannot convey the land, or charge it further than it already was. The latter can call upon the lord for admission, but until he is admitted he is a trespasser; neither can he surrender.

What are the various kinds of admittance, and how do they differ?

(1) On surrender; (2) by descent. They differ in that the surrenderee, as we have seen, only gets an equitable estate before admission; but the heir becomes tenant immediately on the death of his ancestor; that is to say, he may enter, take the profits, devise, and surrender. (3) On devise.

What is the meaning of the lord holding quousque?

On death, if no one came in to be admitted, the lord, after making proclamation at three consecutive courts, might seize, until (*quousque*) some one did come and claim admittance.

How are copyholds mortgaged?

By conditional surrender, *i.e.*, upon condition the money remains unpaid at the time appointed. The mortgagee is never admitted unless he wishes to enforce his security; and when the mortgage is paid off, a warrant of satisfaction only is entered on the Court Rolls; no reconveyance being necessary.

What is an extinguishment by the copyhold?

Where the copyhold has by any method become vested in the lord's own person, he may grant it out *de novo*; but subject in every particular to the ancient customs.

Can copyholds be devised? If so, how?

Copyholds not being within the Acts of Hen. VIII., the devisor made a surrender to the use of his will, which entitled the devisee to admission. This was rendered unnecessary by 55 Geo. III. c. 192, and now copyholds are of course included in the term, real

estate, by the 3rd section of 1 Vict. c. 26; the devisee must, however, be admitted and pay his fine.

How are estates tail in copyholds barred?

It depends (1) whether there is a custom to entail in the manor; and (2) whether the estates are legal or equitable; if the former by surrender, if the latter by surrender or deed, subject to the consent of the protector, and to entry in the *Court Rolls of the Manor*, in pursuance of 3 & 4 Will. IV. c. 74, ss. 5—54.

How do married women pass their interests in copyhold estates?

It depends, again, whether the estate is legal or equitable; if the former by surrender, if the latter by deed (in both of which her husband must join) under 3 & 4 Will. IV. c. 74, and in both cases she must be separately examined in the usual way.

How have manorial burdens and restrictions been commuted and the tenure enforced?

By 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 7 & 8 Vict. c. 55:—

- (1.) The rights of lords of manors to fines and heriots, rents, reliefs, and customary service, as also the lord's right to timber and minerals, were commuted by agreement into monetary payments.
- (2.) Courts of Equity may make partition of copyholds. Lords or stewards may hold customary courts, and grant lands, and admit tenants without any court, and no presentment is necessary, &c.

How has the conversion into freehold been facilitated?

By enfranchisement, which by 15 & 16 Vict. c. 51, and 21 & 22 Vict. c. 94, is made compulsory at the instance of lord or tenant, the amount of compensation being awarded by the copyhold commissioners. The expenses are to be borne by the party requiring the enfranchisement. The land becomes freehold, but the enfranchisement does not affect the estates or rights of either party in any mines or minerals, or fairs, franchise or game. And it may be noticed that if the parties are *sui juris* and consent, a simple conveyance of the fee simple may be made by the lord to the tenant.

CHAPTER XXVIII.

INCORPOREAL HEREDITAMENTS.

What is an incorporeal hereditament in its larger sense, and how are incorporeal hereditaments divided ?

In the larger sense, it may be described as a right to the enjoyment of certain profits and advantages transmissible to heirs ; but it is more generally alluded to in the sense in which we have spoken of it in an earlier portion of this work.

Incorporeal hereditaments consist of rights *in alieno solo*, and are divided into (1) profits ; (2) easements.

What are the various kinds of incorporeal hereditaments ?

(1) Adwosons ; (2) tithes ; (3) commons ; (4) ways ; (5) watercourses ; (6) lights ; (7) offices ; (8) dignities ; (9) franchises ; (10) corodies ; (11) premiums ; (12) annuities ; and (13) rents.

What is a right of common, and what are the various kinds ?

It is a profit which a man hath in lands of another. There are five sorts :—

- (i.) Common of pasture, which is either (1) appendant ; (2) appurtenant because of vicinage ; or (3) in gross.
- (ii.) Common of piscary, which is a liberty in another's water.
- (iii.) Common of turbary, a liberty to dig turf on another's ground, which arises either by grant or prescription, and is either appurtenant or in gross, save in the case of a house, when it is only appurtenant.
- (iv.) Common of estovers, which is the right of cutting necessary wood for use or furniture in another's land, and is claimed either by grant or prescription.
- (v.) Common in the soil, which is the right of digging for coals, stone, and minerals.

Define the common of pasture, and the various kinds ?

It is the right of feeding one's beasts on another's lands.

- (1.) Common of pasture appendant is the right owners and

occupiers of arable land holden of a manor have to turn out their commonable beasts.

- (2.) Common appurtenant, which arises by grant or prescription, extends to other lordships and to other than commonable beasts.
- (3.) Common because of vicinage or neighbourhood, which arises by tacit consent, is the right which the inhabitants of two townships lying contiguous to one another have to intercommon one with another, and to vicinage may be annexed the right to shack.
- (4.) Common in gross or at large is annexed to a man's person, and granted to him and his heirs by deed, or claimed by prescription.

All the above must (i.) as regards time be limited, or limited except (ii.) as to intercommon in gross, which is unlimited.

What is meant by the lord "approving the waste?"

The right which he has under the Statute of Merton, 20 Hen. III. c. 4, to inclose so much waste as he likes against common of pasture, provided he leaves sufficient for those entitled.

What is the principal Act on inclosure? and give its chief provisions.

8 & 9 Vict. c. 118, which in the main provides that the Inclosure Commissioners may, on the application of the person interested of one third in value of any lands, with the consent of the remainder in value and the lord in case the lands be waste, inquire and report to Parliament on the subject of the inclosure. If Parliament think fit to pass an Act, the allotment and inclosure take place by means of a valuer appointed under the superintendence of the Commissioners. The Act also provides for the commutation and extinguishment of common and other rights, and for the depositing copies of the award with the clerk of the peace and the churchwardens of the particular parish.

What are rights of ways, and how do they arise?

A right of private way is the right of passing over another man's ground. They arise (1) by grant; (2) by prescription; (3) by

custom ; the above may all be either appurtenant to some house or land or in gross ; and (4) by necessity.

What are watercourses ?

It is the right of a man to the flow of a stream, either flowing through his own land, in which case he is entitled to both banks, or where one bank belongs to him and the other to his neighbour, in which latter case, unless the stream be a navigable one, each riparian owner is entitled to the stream, *usque ad medium filum aque*, that is, half the land covered by the stream.

This right is distinguished from the ordinary right of merely using water, in that in the former case the owner of the land may insist on having the course kept clear, and free from incumbrances or nuisance, which right may of course be diverted by express agreement between the parties, or by long usage.

What is the right to light, and how does it arise ?

The right of access of the sun's rays which a man has for his windows free and unobstructed. It arises (1) by occupancy ; (2) grant ; (3) prescription ; but until this prescriptive right is established it must be remembered that adjacent owners have equal rights.

What are franchises, and what are the various kinds ?

Franchises are a royal privilege or licence by the Crown's prerogative subsisting in the hands of a subject ; they are held by grant or prescription.

The various kinds are

- (i.) Fairs, markets, and ferries arising by (1) Act of Parliament ; (2) royal grant ; (3) prescription.
- (ii.) Forest, chase, park, warren, and fishery.

What is a forest ?

It is a grant of the assured royal right to devote a certain territory to the keeping of wild beasts and fowls of forest, &c., with the liberty of freely hunting and killing them, together with the right of protecting it, by right of the forest law.

It is capable of being vested in a subject by Crown grant, and it differs from the before described incorporeal hereditaments in

that it is a right which the owner may have either in his own lands or those of another.

What is a chase ?

The franchise of keeping certain kinds of wild animals within a particular district, with the exclusive right of hunting them. When belonging to a subject it must have been created by royal grant.

What is a park and a free warren ?

A park is simply a chase enclosed, save that you cannot have a park over another man's grounds. A free warren is a franchise to have and keep certain wild beasts within the limits of a specified district. It must be granted by the Crown to a subject.

What is a free fishery ?

It is the exclusive right of fishing in a public river or arm of the sea. It is a royal franchise held under the grant from the Crown either express or presumed, as by prescription. The bed of the river belongs to the Crown, the fishing to the public. There may be a particular right vested in a man and his heirs by prescription, but not any longer by royal grant being prohibited by Magna Charta. This privilege differs from common of piscary in that the latter, which only exists in private rivers, may be granted by a private person, and he has no right in the fish till caught.

What are rents, and what are the various kinds ?

Certain profits (*reditus*) issuing yearly out of lands and tenements corporeal. There are three kinds, viz., (1) rent service ; (2) rent-charge ; (3) rent seek.

What are the chief incidents of a rent ?

- (1.) It lies in render and not in *prendre*, like in corporeal hereditaments.
- (2.) It must be of a certain amount.
- (3.) Payable periodically.
- (4.) Out of profits of the land.
- (5.) It must issue out of hereditaments corporeal ; and
- (6.) The payer must be the tenant.

Point out the chief distinctions in the above ?

- (1.) A rent service has some corporeal service incident to it, as rent, fealty, &c., and it has as an incident a power of distress.
- (2.) A rent-charge is where the owner has neither fealty, seignior, or reversion, but power to distrain.
- (3.) A rent seck was where no seignior, reversion, or rights of distress existed. But by 4 Geo. II. c. 28, a right of distress is given. The two latter must be distinguished from an annuity, which is a yearly sum charged, in the person of the grantor.

Are there any other kinds of rents ?

There are also :—

- (1.) Rents of assize, which are the certain established rents of the freeholders and ancient copyholders of a manor, and cannot be departed from. Those of the freeholders were frequently called chief rents, and both are quit rents because the tenant went quit and free of all other services. They are rent service, and liable to distress.
- (2.) A rack rent where the rent was near the value of the tenement ; and
- (3.) A fee farm rent is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands, called a “fee farm” because it was said to be only letting the fee simple to farm by this method.

How may rents be created ? Give examples.

(1) The owner may grant a rent out of the land ; or (2) grant the land subject to the rent. Rent-charge or rent seck arises by either of these modes ; rent service only by the latter.

When and where is rent payable ?

At any time between sunrise and sunset, though rent is not strictly due till midnight. In the case of a subject it is payable on the land, in the absence of any other place being reserved ; where due to the Crown, at the Exchequer Offices, or to a receiver in

the county, and as we have before seen, rent is now, since 33 & 34 Vict. c. 35, apportionable.

What are the various classes of incorporeal hereditaments, and some of their chief incidents?

- (i.) They are either (1) appendant, or (2) appurtenant, that is to say, they are annexed to corporeal hereditaments, in the first case, either from time immemorial, in the second by grant or prescription, and (3) in gross, *i.e.*, they exist *per se*, separately and independently.
- (ii.) Appendant and appurtenant pass with a grant of the land, whether expressly mentioned or not.
- (iii.) The same estates may be had in them as in corporeal hereditaments, and they are subject to the same rules of title.
- (iv.) They cannot pass by feoffment, but by (1) grant; (2) reservation; (3) custom; and lastly by (4) prescription.

What is a title by prescription, and how does it differ from custom?

It is where a man can show no other title to what he claims than that he and those under whom he claims have immemorially enjoyed it. It differs from custom therefore, in that prescription is a *personal* usage and custom a *local* one.

What were the common law rules with regard to a title by prescription?

- (1.) The title is founded on actual usage.
- (2.) The enjoyment must have been constant and peaceable.
- (3.) The usage must have existed from time immemorial, of which prescription a continuance of twenty years is sufficient, or otherwise than by grant or license.
- (4.) It must be certain and reasonable.
- (5.) Either in a man and those whose estate he hath, or in a man and his ancestors.
- (6.) A prescription in a *que* estate must always be laid in him that is tenant in fee.
- (7.) A prescription cannot lie for a thing which cannot be raised by grant.

- (8.) That what is to arise by matter of record cannot be prescribed for ; and
- (9.) A title by prescription does not confer that of purchaser.

How have the rules for prescription been modified by statute ?

By 2 & 3 Will. IV. c. 71, no right of common or other profit or benefit to be taken and enjoyed from or upon lands (except titles, rents, and services,) shall if actually enjoyed by any person claiming right thereto, without interruption for *thirty years*, be defeated by showing that it was first enjoyed subsequent to the era of legal memory, and if enjoyed for sixty years, the right is made absolute and indefeasible, (*i.e.*, in cases of disability of adverse party,) unless it shall appear that the same was taken and enjoyed, expressly made, or given for that purpose by deed or writing. With regard to rights of way and other easements, watercourses, and the use of water, the terms are twenty and forty years respectively, instead of thirty and sixty, and an uninterrupted enjoyment of lights for twenty years constitutes in every case an absolute and undefeasible right to them, any local usage or custom notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given by deed or writing ; and there is provision that in the case of ways and watercourses where the servient tenement shall be held for life or a term exceeding three years, the time of enjoyment during such term is excluded from the forty years in the event of the person who may be entitled in reversion resisting the claim within three years after the term determines.

How may incorporeal hereditaments be extinguished ?

- (1.) By release, implied after a disuse for twenty years.
- (2.) By livery of seisin, except in the case of franchises ; but even here it may be effected in case of revivor with the Crown or forfeiture for their misuse or nonuser.
- (3.) In the case of lights and watercourses by absolute abandonment.

CHAPTER XXIX.

PROTECTION OF PURCHASERS AND MORTGAGEES AGAINST
INSECURE TITLES.

What were the principal provisions of 25 & 26 Vict. c. 53?

This was "An Act to facilitate the proof of title to and the conveyance of real estates." It established an office of Land Registry, and contained provisions for the official investigation of titles, and for the registration of such as appeared good and marketable. It has, however, now been superseded by the Land Transfer Act of 1875 (38 & 39 Vict. c. 87).

State the principal provisions of 25 & 26 Vict. c. 67.

This Act is intitled an Act for obtaining a declaration of title, and it does not appear to be repealed, though seldom used. It empowers every person entitled to apply for the registration of an indefeasible title under 25 & 26 Vict. c. 53, *i.e.*, persons claiming to be entitled to land in possession for an estate in *fee simple*, (copyholds and customaryholds are excluded,) or claiming power to dispose of such estates, to apply to the Court of Chancery by petition in a summary way for a declaration of title. The title is then investigated by the Court, and if the Court is satisfied that such a title is shown as it would have compelled an unwilling purchaser to accept, an order is made (on the conditions in the Act mentioned) that on some day not less than three months afterwards a declaration shall be made establishing the petitioner's title, unless cause is shown to the contrary; but no such order will be made until an affidavit of production of documents has been filed, or the non-production accounted for, and that all material facts have been disclosed. A copy of the order has to be served, deposited, and affixed as directed by the Act, and advertisements of such fact of so depositing such order inserted in such newspapers and on such days as the Court directs. Then, if no petition has been presented within the proper time, or has been refused, the Court will make the necessary declaration.

BOOK II.—PART II.



CHAPTER I.

THINGS PERSONAL AND THE PROPERTY IN THEM.

What do things personal comprise ?

All goods and chattels, *i.e.*, movables.

What do movables consist of ?

- (1) Inanimate things; (2) vegetable productions; (3) animals, the latter of which are subdivided into (1) *feræ*, and (2) *domitæ naturæ*.

How may a man be invested with a special property in animals feræ naturæ ?

- (i.) *Per industriam*, by (1) reclaiming; (2) confining them.

It must also be remembered that they are (1) partly of the realty, and descend to the heir; (2) they are only his property so long as they continue in his possession, unless they have *animum revertendi*; (3) they are protected by law.

- (ii.) *Propter impotentiam*, on account of their own inability, as in the case of the young of birds who have built in a man's trees.

- (iii.) *Propter privilegium*, a special privilege in game, so long as they remain on his property.

What are incorporeal chattels, and what do they include ?

They are the rights incident to corporeal chattels. They include (1) patent right; (2) copyright.

How may property in chattels personal arise? Give definitions.

It arises either (1) in possession (*i.e.*, when a person has the actual enjoyment of a thing), or (2) in action.

The former is again subdivided into two kinds—(1) absolute; (2) qualified.

Absolute property is where a man has such an exclusive right in the thing that it cannot cease to be his without his own act or default.

Qualified is such as is not in its nature permanent, but may sometimes subsist, and at other times not subsist. It arises (1) where the subject is incapable of absolute ownership, as in the case of animals *feræ naturæ*; (2) from the peculiar circumstances of the owners, as in cases of a bailment, finding, &c.

What is a chose in action? Give an example.

Where the man has not the actual or constructive occupation of the thing, but only the right to it, arising upon some contract, and recoverable by an action at law, as in the case of money due on a bond.

To what distinctions are personal chattels subject?

- (i.) As to quantity of interest (1) may be absolute or (2) for life.
- (ii.) As to time of enjoyment may be (1) in possession, or (2) in remainder created by deed or will.
- (iii.) As to the number of the owners may be (1) in joint tenancy, and (2) in common; and it must be remembered that personal property may be converted (1) to the use; (2) upon trust for another.

CHAPTER II.

THE TITLE TO THINGS PERSONAL—TITLE BY OCCUPANCY.

How may the title to things personal be acquired or lost?

(1) By occupancy ; (2) invention ; (3) gift and assignment ; (4) contract ; (5) bankruptcy ; (6) will and administration.

In what various methods may goods be acquired by occupancy ?

- (i.) By seizing the goods of an alien enemy subject (1) to the consent of the Crown, and (2) to property brought into this country after declaration of war without a passport.
- (ii.) In the case of animals *feræ naturæ* (1) on land (subject to the game laws), and if they are reclaimed or confined, they become, if alive, the qualified, if dead the absolute property of the captor ; (2) in the sea.
- (iii.) By accession ; as regards accession by breeding animals, the maxim is *Partus sequitur ventrem*.
- (iv.) By intermixture and confusion of goods, which, if done by consent, creates an interest in common *pro ratâ* ; otherwise if (1) the goods are not distinguishable ; (2) the quality is not uniform ; or (3) the quantity not known, they become the property of the person who has not interfered.

CHAPTER III.

TITLE BY INVENTION.

What is a patent right ?

A privilege granted by letters patent from the Crown to the first inventor of a new contrivance in manufacture to benefit by it for any certain period.

What are the only circumstances under which letters patent will be granted, and for how long ?

- (1.) It must be a manufacture.
- (2.) New within the realm.
- (3.) The grantee must be the true and first inventor in this country.
- (4.) The grant must not exceed fourteen years.
- (5.) It is an act of royal favour.

How are letters patent obtained ?

By petition supported by declaration of the petitioner's being the true and first inventor, and that the manufacture is not in use in this country. The above are left with the Commissioners of Patents, with a provisional or complete specification of the manufacture. The advertisements are issued, and particulars of objection, if any, are lodged ; then the proper time having elapsed, a warrant is sealed by the commissioners for the sealing of the letters patent, which are thereupon sealed by the Lord Chancellor, and the specification filed in the Court of Chancery.

Is a patent right assignable ; if so, how ?

It is (1) by deed ; or (2) the patentee may grant deeds of licence to use the patent without parting with his interest.

May the period of fourteen years be extended, and how is the application made ?

Yes, for a further period of fourteen years, by petition to the Crown, duly advertised and presented within six months before the expiration of such original fourteen years. Any person may enter a "*caveat*" against the extension.

What is the inventor's remedy if a patent right be infringed ?

(1.) By action for damages ; (2) by injunction, with an account of profits ; and (3) by 5 & 6 Will. IV. c. 83, a person using the name, stamp, or mark of a patentee is to forfeit £50 for every offence.

How can an application for damages for an infringement be resisted ?

By showing—(1.) That there has been no infringement.

- (2.) The patent was invalid.
- (3.) It was not a fit subject for a patent.
- (4.) The patentee was not the first inventor ; or
- (5.) The specification was insufficient.

By leave of the Attorney-General, a *scire facias* may be instituted to cancel the patent, and this though there be no infringement.

Assuming the patentee not to be the first inventor, or there to be an error in the specification, is there any relief ?

Yes, in the first case a petition to the Crown (1) for a new grant, or (2) to confirm the existing one ; in the second, a disclaimer may be filed in Chancery of the title or of any part of his specification, or a memorandum of any alteration.

What is a copyright, and how has such right of property been recognised ?

The right a man has to print and publish his own books, to the exclusion of all other persons.

By 8 Anne, c. 19, amended by 15 Geo. III. c. 53 ; 41 Geo. III. c. 197, and 54 Geo. III. c. 156 ; and lastly repealed by 5 & 6 Vict. c. 45, whereby the right is reserved to the author and his representatives for the term of his natural life and seven years afterwards, or for the term of forty-two years, whichever is the longer period ; in case of a posthumous work forty-two years from first publication. The proprietor must register the title at Stationers' Hall, otherwise no action can be commenced.

What is the remedy for infringements of copyright ?

(1.) By action within twelve months for damages ; or (2) by an injunction on account of profits.

Is a copyright assignable ; if so, how ?

It is ; by any writing signed by the assignor, and entered at Stationers' Hall (5 & 6 Vict. c. 45) ; and there is no stamp duty payable.

Has the Crown any privileges in copyright ?

Yes—(1) in all the Acts ; (2) the Liturgies Book of Worship,

and the translation of the Bible, which are also extended to Crown grantees.

Are there any other kinds or species of copyright which are protected?

Yes :—

- (1.) Dramatic pieces.
- (2.) Musical performances.
- (3.) Engravings and prints.
- (4.) Sculptures, models, copies, and casts.
- (5.) In designs.
- (6.) Paintings, drawings, and photographs.

CHAPTER IV.

TITLE BY GIFT OR ASSIGNMENT.

How far is the property in things personal transferable? Are there any exceptions?

Generally, so far as the owner's interest goes, the following parties however are under incapacity, (1) infants; (2) *non compos mentis*; (3) persons under duress; (4) married women, save as to separate estate; and the following have only limited interests, viz.,

(1) Officers of the army or navy as to pay or half-pay; (2) Public officers as to their salary; (3) Persons having public appointments; (4) Assignees of choses in action, except in the case of the Crown.

What was the practice with regard to suing on choses of action, and how has it been affected by the Judicature Act?

To take a declaration of trust with an agreement allowing the assignee to sue in the name of the assignor. The Judicature Act, 1873, allows an assignee to sue in his own name where the assignment is absolute and notice has been given to the debtor (36 & 37

Vict. c. 66, s. 25, sub-s. 6 ; see also 30 & 31 Vict. c. 144, as to assignments of life policies, 31 & 32 Vict. c. 86, as to assignments of marine policies, and 32 & 33 Vict. c. 71, s. 3 (B. A. 1869) as to the assignments of choses in action in bankruptcy.

What are the modes of acquiring property in things personal ?

- (1.) By gift, which is a voluntary conveyance of a chattel personal in possession without any consideration or equivalent.
- (2.) By assignment or bargain and sale, founded on valuable consideration.

What are the peculiarities of a gift, and how must it be effected ?

- (1.) It is void as against creditors (13 Eliz. c. 5).
- (2.) It could not have been made in trust to the *use of the* donor by Hen. VII. c. 4, because the forfeiture would necessarily have been destroyed.

It must be effected (1) by deed, or (2) by delivery of possession.

What is a donatio mortis causâ ; how does it resemble a legacy, and how must the gift be made ?

It is a gift of personal property made by a person in peril of death, upon condition of his not recovering from his then existing disorder, or not revoking the gift before his decease. It resembles a legacy in that (1) it may be made to a wife ; (2) it is liable to debts on a deficiency of assets ; (3) it is revocable ; (4) it is liable to legacy duty.

It differs from a legacy in that (1) it does not require the gift of the executor to perfect it ; (2) it does not require proof in the Probate Court.

The gift must (1) be accompanied by delivery ; and (2) must be permanently retained by the donee.

How may an assignment of personal chattels be made ?

- (i.) By word of mouth.
- (ii.) In writing (1) either by memoranda as under the 10th section of Statute of Frauds; or (2) assignment, as in case of bill of sale.

What is a bill of lading; how has it been affected by 18 & 19 Vict. c. 111?

It is a document used in the case of goods sent abroad; it is in the form of a receipt from the captain to the shipper of the goods, undertaking to deliver the goods to the person named on payment of the freight. The property in the goods passes by delivery of the bill of lading; and by the above statute the assignee may sue in his own name.

Mention some contracts for sale of goods which are required by statute to be in writing.

- (1.) Contracts within the 17th section of the Statute of Frauds.
- (2.) Transfers of ships.
- (3.) Assignments of patents or copyrights.
- (4.) Bills of exchange and promissory notes payable to order.

How far does a writ of execution bind property?

Under 13 Eliz. c. 5, gifts of chattels to defeat creditors are void, and the retaining the possession was *primâ facie* evidence of the fraud, and now a sale of goods after the issuing a writ of execution is void as against the *parties*, but as regards *purchasers* 19 & 20 Vict. c. 97 enacts that *bonâ fide* purchasers for value without notice are protected until the goods have been actually seized.

What do you know of a bill of sale?

It is an assignment of chattels by deed, and it is void against execution creditors so far as regards chattels in possession unless registered in the Court of Queen's Bench within twenty-one days after date, in pursuance of stat. 17 & 18 Vict. c. 36, which registration must be renewed every five years pursuant to 29 & 30 Vict. c. 96.

CHAPTER V.

TITLE BY CONTRACT.

Distinguish between a contract and a promise.

A contract is an agreement between two or more persons, upon sufficient consideration, to do or not to do a particular thing, whereas a promise is a mere voluntary engagement by one person, and consequently devoid of reciprocity.

How may contracts be divided ?

Into (1) simple, which are either verbal or in writing, other than under seal ; (2) specialty which are in writing, sealed and delivered.

Is it necessary that a contract should be in writing and signed ?

- (i.) In cases of contracts coming within the 4th section of the Statute of Frauds (29 Car. II. c. 3) which are :
 - (1.) A special promise by an executor or administrator to answer damages out of his own estate.
 - (2.) To answer for the debt, default, or miscarriage of another.
 - (3.) An agreement made in consideration of marriage.
 - (4.) A contract for sale of lands, tenements, or hereditaments or any interest therein.
 - (5.) Any agreement not to be performed within a year.
- (ii.) By 9 Geo. IV. c. 14 promises to pay statute barred debts.

Distinguish between express and implied contracts ?

(1) Express contracts are openly uttered and announced at the time ; (2) implied contracts rest merely on construction of law, being such as justice and reason dictate, as in the case of employing a person to work, there is an implied contract to pay what his work is worth.

Where there is an express contract can an implied one exist ?

No, the maxim being *expressum facit cessare tacitum*.

Distinguish between an executed and an executory contract ?

(1) An executed contract is one which is performed, as in case of goods sold, delivered, and paid for ; (2) executory, one which is to be performed, as if A. and B. agree to change houses next week.

What is the principal incident of a simple contract ? Give the maxim.

A contract is void without consideration. *Ex nudo pacto non oritur actio*.

What do you understand by a consideration sufficient to support a contract ? Will the Court go into the question of adequacy ?

Any benefit or loss accruing to the person making the promise ; and as long as there has been some consideration the Court will not go into the question of adequacy.

What are the various kinds of consideration ? and distinguish them.

- (1) Executed ; (2) executory ; (3) concurrent ; (4) continuing.
 - (1.) Is some matter done at the time of the promise being given, in return for which the promise is given.
 - (2.) Some matter undertaken to be performed in return for the promise.
 - (3.) Is where the consideration and the promise are contemporaneous, as a promise for a promise.
 - (4.) Where the consideration is made before the promise, and continues after—as service or marriage.

Mention some classes of considerations which will not support a contract.

- (1.) A good consideration, *i.e.*, natural love and affection.
- (2.) Past moral considerations.
- (3.) Illegal considerations.
- (4.) Immoral or fraudulent.

And it must be remembered that the consideration must always issue from the promisee.

Mention some rules which govern the capacity of parties to enter into contracts.

- (1.) Infants and insane persons are liable for necessities if supplied *bonâ fide*.
- (2.) A married woman cannot bind herself or her husband, save as his agent.
- (3.) Contracts made under duress may be avoided.
- (4.) Contracts made by persons excessively drunk are void.

Mention some of the rules for the construction of contracts.

See answer to Question page 61, *ante*, "Construction of deeds."

What is the effect of a contract to do an illegal or impossible act ?

It is void, and if it subsequently becomes illegal, as by statute, the contract need not be performed ; but it is otherwise where the contract has since become impossible, for it is a person's own fault if he enter into an unconditional contract.

What is the effect of a breach by one of the parties of a condition in a mutual agreement ?

If it is of such a nature as to constitute a condition precedent, it will discharge the other party, but it must be remembered that it may only be a breach of such a kind as would entitle the other party to an action for damages.

How may an agent be constituted ?

- (i.) By express appointment either (1) by word of mouth ; (2) by writing, as is required by the 1st, 2nd, and 3rd sections of the Statute of Frauds ; (3) by deed if to execute a deed.
- (ii.) By implication.

How does an agency determine ?

- (1.) By death of the principal.
- (2.) By the revocation of the principal as a general rule.

How many kinds of agencies are there? and distinguish between them.

- (1.) General, one who is empowered to do any act in a particular line of business.
- (2.) Special, one who can act only in some particular transaction mentioned.

It may be remembered that the authority of the former is a general one, within the scope of the particular business, whereas that of the latter is limited to his actual and precise authority.

If a contract made by an agent without authority be subsequently confirmed, what is the result?

It binds the principal, the maxim being *omnis ratihabitio retrotrahitur et mandato priori æquiparatur*.

By whom is a contract made by an agent, to be enforced?

By the principal in his own name, and he is also himself liable when disclosed; or by the agent, if he does not disclose his principal, unless he entered into the contract professedly as agent.

Can an agent appoint another to act in his stead?

Not without special authority, for *delegatus non potest delegare*.

What is a contract for sale?

A transmutation of property from one person to another in consideration of some recompense in value.

What is the difference between a sale and an exchange?

The former is giving goods for money, the latter goods for goods.

What does a contract for sale imply?

A bargain, for ready money. If there be a delivery or part delivery by the vendor or a payment or part payment by the vendee, which is respectively accepted, or there is a respective tender of the goods or part, or the price or part, the property and the risk in the goods vest in the vendee. Again if it is a sale of a specific chattel on credit to be delivered immediately the property passes directly,

assuming the goods are ready for delivery, but it is otherwise if they have to be ascertained, or any act done by the vendor, under which circumstances the risk is in the vendor.

Distinguish between the vesting of property and the right of possession.

The property passes on the bargain being struck, but the right of possession does not vest till payment or tender of the whole price if the sale was for ready money.

What is the principal provision of the 17th section of the Statute of Frauds?

That contracts for the sale of goods, wares, and merchandise for the price of £10 or upwards, (1) must be in writing, signed by the party to be charged therewith, or his agent thereunto lawfully authorised; or (2) something must be given in earnest or part payment; or (3) there must be a part delivery and acceptance, which section is by Lord Tenterden's Act, 9 Geo. IV. c. 14, extended to goods which have to be made and delivered at a future time.

What is the right of stoppage in transitu?

The right which the vendor has to stop the goods before they have come into the actual or constructive possession of the vendee, on hearing of the latter's bankruptcy.

What is a sale in market overt? Are there any exceptions to the law of such a sale binding?

In open market; that is, in a market held on special days, in particular towns, on special spots of ground set apart for that purpose, but it must be remembered that in the city of London every day but Sunday is market day, and every shop therein containing articles which the vendor proposes to trade in, is a market overt.

The exceptions to a sale binding in market overt are (1) in case of the Crown; (2) if the buyer knows that the seller is not the owner; (3) in case of any fraud; (4) if the sale was not originally or wholly made in market overt; (5) if a man buys his own goods, unless the property has been altered by a former sale.

What is the effect of a purchase in market overt as regards goods which have been stolen ?

The owner cannot recover the possession unless he has prosecuted the thief to conviction, which will entitle the owner to an order for restitution, although there may even have been an intermediate sale in market overt. Again, as regards horses stolen and sold in market overt, the owner's property is not divested unless sold pursuant to the directions of the statutes 2 Ph. & M. c. 7, and 31 Eliz. c. 12.

Distinguish between warranty of title and soundness.

On a sale of goods there is no warranty of title implied as a general rule, except where goods are sold by a shop-keeper in the ordinary course of his business, or under an executory contract, or one from which the jury would infer a warranty.

With regard to soundness the vendor is not liable unless he expressly warrants them, for the maxim is *caveat emptor*, which is applied with this restriction, that the vendor is compelled to disclose latent defects, and he must not conceal patent, and there is no warranty to be deduced from the fact of a sound price.

What is the rule of law as to warranty of quality where the purchaser does not himself inspect the goods, but relies on the representation of the vendor ?

There is an implied warranty on the part of the latter, that the article he sells is the very article the purchaser has agreed to buy, but where the purchaser is afforded the means of inspection and examination, there is no implied warranty on the part of the vendor, except the article be an ordinary commodity, and manufactured by the seller himself, or when the goods are ordered for a specific purpose.

Distinguish between factors and brokers ?

Factors are entrusted with the possession of the goods they have to sell, and are authorised to sell in their own names; while brokers are merely agents between the parties.

What is a del credere agent ?

One who for a higher commission guarantees to his principal the price of the latter's articles.

How are persons protected in dealing with parties having the indicia of the property ?

By the various provisions contained in the statutes 4 Geo. IV. c. 83, 6 Geo. IV. c. 94, and 5 & 6 Vict. c. 39, which enact (1) where any person ships goods in his own name or in whose name goods are shipped by another, although only for the purposes of sale, shall be deemed the true owner as far as the consignee's security for advances goes, assuming he, *i.e.*, the consignee, had no notice to the contrary ; (2) the consignee of the bill of lading, dock warrant, &c., shall in like manner be considered the true owner for the purposes of a sale ; (3) that an agent for the purposes of sale shall also be considered as the true owner where such agent is consignee and the sale is in the usual course of business ; and (4) that such agent so entrusted may pledge the goods *bonâ fide* notwithstanding that the pledgee has notice that the pledgor is an agent.

What is a contract of bailment ?

Bailment, from the French *bailler*, to deliver, is the delivery of goods from one person to another that something may be done for the benefit of the owner or the person to whom it is delivered, or of both ; the person who delivers the chattel is called the bailor and the person who receives it the bailee.

In what cases does the doctrine arise ?

(1) In the case of tailors ; (2) carriers ; (3) innkeepers ; (4) agisters ; (5) pawnbrokers ; (6) in the bailment of goods between debtor and creditor ; (7) a delivery of goods to keep for a friend ; (8) a loan of goods gratis ; (9) a loan of goods for hire.

What is an agistment ?

Where a person takes in another's cattle to graze, he works no improvement on them, and is only therefore liable for gross neglect.

What are the different degrees of responsibility to which bailees are subject ?

It necessarily depends upon the nature of the bailment, (1) in the case of a bailment for the mutual benefit of the parties the bailee is liable for *ordinary* neglect ; (2) in the case of an unremunerated bailee for *gross* neglect ; and (3) in the case of goods useful to the bailee being lent to him gratis for *slight* neglect ; but it must be remembered that in all the above cases the bailees are not liable for (1) robbery ; (2) the act of God ; or (3) the Queen's enemies.

What is ordinary neglect ?

That want of diligence which men in general exert in respect to their own affairs.

What property has the bailor and the bailee respectively in the goods ?

The bailee's property is qualified, *i.e.*, only so long as the bailment continues, the bailor having the right to recover the goods by action after such bailment has determined. Again, the bailee has a right of action against third parties for loss or injury to the goods.

What is a lien ? and distinguish the various kinds.

The right of retaining the possession of a chattel from the owner until all legal claims upon it are satisfied, as in the case of a tailor for the cost of making the clothes. Liens are either (1) particular, as above, or (2) general, which is the right of retaining the chattel not only until the particular claim upon the individual chattel be satisfied, but also any general balance of account which may exist between the parties, as in the case of solicitors, wharfingers, bankers, &c.

What is a common innkeeper, and what his general liability ?

A common inn includes every tavern or coffee house in which lodging is provided. The innkeeper is compelled to find reasonable and proper accommodation for his guest, assuming he is ready to pay for it, and to protect his goods from robbery, consequently he is liable for the felonious taking of the goods placed in his custody,

and he is responsible for the acts of his servants, but not for the acts of God or the Queen's enemies, nor for goods placed in a room of which his guest had the special charge, or for his guest's negligence, or the acts of the guest's servants.

How is the innkeeper protected by Statute ?

By 26 & 27 Vict. c. 41, sect. 1, he is not liable for the loss of or injury to goods and property except a horse or other live animal, or any gear appertaining thereto beyond £30. Except (1) when such goods have been lost, stolen, or injured through the wilful act, default, or neglect by him or any of his tenants, or (2) where such goods or property shall have been deposited expressly with the innkeeper for safe custody, and s. 3 of the Act requires that the above section, viz. s. 1, should be exhibited in the bar or some other conspicuous part of the entrance hall to enable the innkeeper to take the benefit of the Act ; and in the case of a deposit of goods with the innkeeper he may, if he think fit, require that the goods or property may be deposited in a box or other receptacle fastened and sealed.

Has an innkeeper any lien upon the clothes or goods of his guests ?

He has none on the clothes of his guest, neither may he detain his person, but he has a lien on his goods if within the inn.

What is a common carrier, and what is his liability at Common Law ?

Every person who proposes to carry goods or passengers and goods for hire by a carriage by land or a boat or vessel by water. He warrants the safe delivery of the goods committed to him, and is only excused by the act of God and the Queen's enemies ; he is bound to receive, carry, and deliver all goods paid for, (save " specially dangerous goods," under 29 & 30 Vict. c. 69,) and he is liable for loss otherwise than that occasioned by such bad packing as amounts to gross negligence on the owner's part, and he may demand an increased rate of charge to be notified by notice affixed in his office, and customers are to be bound thereby without further proof of the notice having come to their knowledge.

How has a carrier by land been protected by statute ?

Carriers by land can, however, only limit their responsibility by special contracts, and not by public notice ; but they are entitled to the protection of the statute 11 Geo. IV. & 1 Will. IV. c. 68, which enacts that no carrier by land shall be liable for loss or injury to the articles specified in the schedule to the act, when the value exceeds £10 ; unless, at the time of delivery, the value and nature of the article be declared, and the increased charges, or an engagement to pay the same accepted by the person receiving the parcel.

But it must be remembered that this Act does not protect the carrier from (1) the felonious acts of his servants ; or (2) the servant himself from personal negligence or misconduct.

How has a carrier by sea or a shipowner been protected by statute ?

By 17 & 18 Vict. c. 104, he is protected (1) against fire, without his own actual fault or privity ; or (2) against robbing or embezzlement of gold, silver, diamonds, watches, jewels, or precious stones, unless the nature and value of the articles have been inserted in the bill of lading or otherwise declared ; and by 25 & 26 Vict. c. 63, s. 54, the owner of any sea-going ship is not answerable without his own actual fault or privity in the aggregate for more than £8 per ton of the ship's tonnage.

How does a contract for loan of money differ from a bailment ?

The identical money is not to be returned but an equivalent sum with interest.

What are the various statutes regulating the law of interest, and to what amounts do they respectively limit such interest ?

- (1.) By 37 Hen. VIII. c. 9, and 13 Eliz. c. 8, interest was limited to £10 per cent.
- (2.) By 21 Jac. I. c. 17, to £8 per cent.
- (3.) By 12 Car. II. c. 13, to £6 per cent.
- (4.) By 12 Anne, stat. 2, c. 16, to £5 per cent.

But by 18 & 19 Vict. c. 90, the laws against usury are repealed, save as regards rates of interest payable on contracts at a legal or current rate, or on debts by rule of law.

What were the class of cases in which the common law courts did not interfere as to the amount of interest to be taken ?

- (1.) Contracts bearing interest made in a foreign country, as in cases of bottomry or *respondentia*.
- (2.) In which the terms of the loan jeopardise the money lent, as annuities upon lives.

What is a bottomry bond ?

It is in the nature of a mortgage of a ship, where the master borrows money to enable him to carry on his voyage, and pledges the bottom or keel of the ship, *partem pro toto*, as a security for its repayment. If the ship is lost the lender loses his money, but if not, then he recovers his principal and interest.

What is meant by the term respondentia ?

Where the loan is not on the vessel but the goods or merchandize in it, inasmuch as it must necessarily be sold or exchanged in the course of the voyage, the borrower is only personally liable, and is said to take up his money at *respondentia*.

How did the practice of purchasing annuities for lives affect the question of interest, and do they require inrolment ?

Inasmuch as from the nature of the security itself, the borrower did not give the lender a permanent security, the question of interest was never considered in the light of usury ; while on the other hand, 18 & 19 Vict. c. 15, ss. 12, 14, require all annuities (not given by marriage settlement or will), for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives, must be registered in the Common Pleas Office, so as to affect lands against purchasers, mortgagees, or creditors.

When is interest recoverable at common law ?

When nothing is said about it, it is presumed not to have been contemplated, and is not allowed, except in mercantile securities and by the usage of trade, or where it is implied by the course of dealing between the parties ; so it is allowed on bills of exchange, promissory notes, over-due money, bonds, &c. as damages, and

judgments carry interest at 4 per cent. And by 3 & 4 Will. IV. c. 42, s. 28, it may be awarded by the jury, if they think fit, upon all debts or sums certain, payable at a certain time or otherwise at a rate not exceeding the current rate from the time such debts and sums were payable, if they be payable by virtue of some written instrument, or if payable otherwise, from the time when demand of payment was made in writing, provided that such demand gave notice to the debtor that interest would be claimed from the date of the demand until the time of payment.

What is a partnership, and how is it created?

A contract whereby two or more persons agree to combine property, or labour, or both for the purpose of a common undertaking, and the acquisition of a common profit.

It is usually created by deed, though not necessarily.

Should the members exceed twenty, it is usually incorporated as a company.

How is a partnership dissolved?

- (1.) At the will of the parties. (2.) By expiration of the term.
 (3.) By mutual agreement. (4.) Decree of a Court of Equity.
 (5.) By death. (6.) By bankruptcy.

What authority have partners to act for each other?

As a general rule one partner has an *implied* authority to act as agent for the others, at all events within the scope of the particular business, which, of course, may be rebutted by express notice, and, in some cases, the actual consent of the other partners is required, as in the case of the execution of a deed by one partner which requires the authorisation of the other partners by deed.

What is a nominal partner as opposed to a dormant partner, and how far are they respectively liable?

A nominal partner is one who, without taking any share in the profits, allows his name to remain in the business, whereas a dormant partner is one who shares in the profits but does not appear in the firm by name.

The former is liable to all parties having no notice of the fact, and the latter, when discovered, is equally liable with the rest, but only so long as he continues connected with the business ; he is not liable for after contracts to future creditors like an ostensible partner who has not duly advertised his retirement in the *Gazette*.

How has the law of partnership been affected by 28 & 29 Vict. c. 86 ?

- (1.) The advance of money on a contract to receive a share of profit does not constitute the lender a partner.
- (2.) The remuneration of servants or agents by a share of the profits does not make them partners.
- (3.) Widows and children being annuitants on the profits of the business are not partners.
- (4.) And a receipt of profits in consideration of the sale of the goodwill does not make the seller a partner.
- (5.) But in the case of a bankruptcy, &c., the lender, or vendor of the goodwill will not rank with the other creditors until all the claims have been satisfied.

What is the proper course for partners to adopt who have claims against one another ?

To take an account in Equity and get a receiver appointed, or to obtain any other necessary remedy.

What is a guarantee, and how is it affected by Statute ?

A collateral engagement to answer for the debt, default, or mis-carriage of a *third party* who is primarily liable.

The 4th sect. of the Statute of Frauds, requires that it should be in writing, and signed by the party to be charged therewith, or his agent ; and 19 & 20 Vict. c. 97, enacts that it is no longer necessary that the consideration should appear on the face of the instrument.

What is the effect of a guarantee to or for a firm ?

By 19 & 20 Vict. c. 97, it is not binding on the guarantor if a change is made in the persons constituting the firm, in the absence of a contrary intention or necessary implication from the nature of the firm.

How can sureties be discharged from the liability by the conduct of the person to whom the guarantee has been given ?

- (1.) By release of the principal's debt.
- (2.) By extinguishment of the debt.
- (3.) By extension of time of payment.
- (4.) By a release of one of the co-sureties.
- (5.) By having induced the surety to give a guarantee in reliance in and on the faith of a misrepresentation.

In what position does a surety stand as regards repayment ?

In the position of a creditor, because the law implies a promise to indemnify him principal and interest ; when, therefore, he has discharged the claim against the principal, he is entitled to pursue his remedy for money paid to the use of the principal, and he has also a right against any co-sureties that may exist for contributions, and can sue them for money paid to their use.

What are a surety's rights against a creditor whose debts he has paid ?

By 19 & 20 Vict. c. 97, s. 5, he has a right to have the creditor's securities in respect of the debt assigned to him, to stand in the place of the creditor, as against the principal debtor or any co-surety.

What is a bond, and what are the various kinds ?

An obligation by deed, whereby the obligor declares himself, his heirs, executors, and administrators bound to pay a certain sum of money, which is called a simple bond, or with a condition added that if the obligor does or omits to do some particular act the obligation shall be void, or else shall remain in full force. This is usually termed a bond with a penalty.

What are the incidents of a bond ?

It must not contain an illegal or an immoral condition, otherwise the whole bond is void on the ground of public policy ; but the mere fact of the condition being impossible is immaterial, because that fact is merely attributable to stupidity, unless such impossibility has arisen from the act of God, on the part of the

obligor ; again, if the legal conditions be separable from the illegal, the latter only shall fail.

What is the effect of the forfeiture of the bond ?

Formerly the *whole penalty* was recoverable, but the Courts of Equity and Common Law interposed and prevented anything more than principal, interest, and costs being recoverable for the default, and in the case of an act to be performed or omitted damages merely adequate to the omission or performance; and subsequently by 8 & 9 Will. III. c. 11, amended by 15 & 16 Vict. c. 76, the jury are to enquire into the actual amount of damage sustained, and though judgment may be signed for the penalty, execution can only issue for the actual amount of damages.

What is the distinction between a penalty and liquidated damages ?

The penalty is where the parties are entitled to judgment and execution for the whole amount mentioned, that is to say, the penalty. Liquidated damages are those which are merely adequate to the act complained of and ascertained by the jury, and for which only (though judgment be entered up for the larger amount) execution can issue.

It must, however, be remembered that the Courts will interfere where damages, stated to be "liquidated," are in reality "penal" in disguise.

What is a bill of exchange ; name the various parties, and what are the different kinds ?

An open letter of request from A. to B. desiring B. to pay a sum named therein to a third person on A.'s account. It is also called a draft. The person who writes the bill is called the *drawer*; the person to whom it is written the *drawee*, and after acceptance the acceptor, and the third person to whom it is payable, by endorsement or otherwise, the payee.

Bills of exchange are of two kinds—(1) Inland, and (2) foreign.

Distinguish between inland and foreign Bills of Exchange.

An inland bill is either both drawn and payable here or drawn

in one part and payable in any other part of the British Islands. A bill drawn or payable elsewhere is a foreign bill.

What is the meaning of an instrument being negotiable ?

When the right of suing is transferable from one person to another, as if a bill is made payable to A. B., or his order, or simply to the order of A. B. In the case of a cheque, or what is in reality a bill of exchange on a banker, the document is transferable by mere delivery.

Explain the following terms—(1) an indorsement in blank or in full; (2) arriving at maturity; (3) Presentment; (4) Acceptance.

- (1.) The indorsement may be simply to A. B., and if so, he merely writes his name on the back, which is termed an indorsement in blank; should the name of the indorsee, or person to whom the bill is payable, be added, the bill is described as being indorsed in full.
- (2.) When a bill is due it is said technically to have arrived at maturity.
- (3.) The presentment for acceptance is merely the handing it to the drawee to write his name across as acceptor, as required by 19 & 20 Vict. c. 97, which is styled
- (4.) The acceptance.

How ought a bill to be accepted ?

(1) Simply as mentioned in the last answer; or (2) specially, *i.e.*, mentioning the place where it is to be paid, "and not elsewhere."

What are the various steps to be taken to get the bill paid, and what are the several liabilities of the parties ?

- (1.) It must be presented for payment the day it becomes due.
- (2.) Notice of dishonour must be duly given, *i.e.*, if to a party residing in the same town on the next day; if in another by the next day's post; or if the bill is a foreign one by the next ordinary conveyance.

The relative liability of the parties is that the acceptor is primarily liable, and that the drawers and indorsers are merely

sureties, but that each prior indorser is a principal in respect of each subsequent one.

Assuming the bill to fall due on a bank holiday, when is it payable ?

By 34 Vict. c. 17, on the next day.

Assuming the drawee to refuse acceptance, in what position is the holder ?

Simply, upon notice of non-acceptance, to charge and sue the other parties, even though the bill is not due, or to present it to the drawee at maturity.

Ought bills always to be presented for acceptance ?

Not unless the bill is payable after sight or after demand ; but it must always be presented for payment.

What do you mean by protesting a bill, and explain the term supra protest ?

Protesting a bill is formally stating or declaring its non-acceptance or non-payment before a notary public. It is essential in the case of a foreign bill before proceedings can be taken on it, but not in the case of an inland one.

If acceptance of a bill is refused, it may be accepted *supra protest*, for "the honour of" the drawer or any indorser, by a stranger, who thereby undertakes to pay the bill if the drawer or indorser do not ; this is done after the bill has been protested for dishonour, the party, for whose honour the acceptance is thus made, and all antecedent parties to the bill, being liable to the acceptor *supra protest* for damages incurred by his position.

When should a bill accepted supra protest be presented for payment to such an acceptor ?

Not until the day after it becomes due, and need not be sent away where the parties reside, in a different town till the day following ; and in case of that day being a Sunday, Good Friday, &c., or a bank holiday, then on the next day to such fast or thanksgiving day, or bank holiday.

What is a promissory note ; how does it mainly differ from a Bill of Exchange ?

It is a simple engagement in writing to pay a specified sum at a limited time to a person named or his order as bearer. A promissory note has only two parties, (1) the maker; (2) the payee; but in the case of non-payment the subsequent indorsers have the same remedies against prior endorsers upon the usual notice.

What are the peculiarities of Bills of Exchange and promissory notes ?

- (1.) They are negotiable instruments ; *i. e.*, they and the right of suing are assignable.
- (2.) A bill drawn to order and endorsed in blank or payable to bearer, though stolen or found, is capable of transfer if *bond fide* for value, and without notice to the transferee.
- (3.) The consideration is presumed until the contrary is shown.

What are policies of Insurance, and what are the various kinds ?

Simply contracts between A. and B. that upon A.'s paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event. They are either (1) Marine ; (2) Fire ; or (3) Life policies.

What are marine insurances and by whom are they usually undertaken ?

Insurances against loss or damage by sea, and they are generally undertaken by a class of persons called underwriters, so called because each underwrites the policy for a particular amount up to which he is separately liable or the policy may be underwritten by a joint-stock company, or by bodies incorporated by private act or charter.

What are the provisions of 28 Geo. III. c. 56, as to marine insurances, and distinguish between re-insurance and double insurance ?

By the above statute the policy must contain the names of the

parties interested, or the consignor or consignee, or some person residing in Great Britain who effects the insurance or gives order to the agent for that purpose.

A re-insurance is simply where the insured seeks to protect himself by again insuring with somebody else, and a double insurance is where the insured seeks to insure again for another amount though his loss would be fully covered by the first insurance. It must also be remembered that no marine insurance upon any ship or share can be made for a longer period than twelve calendar months, and by 31 & 32 Vict. c. 86, the assignee of a Marine policy may sue in his own name.

What are the dangers most usually insured against?

(1) Perils of the sea. (2) Capture. (3) Fire. (4) Jettisons, *i.e.*, throwing overboard to lighten the ship. (5) Arrests. (6) Barratry of the master or mariners.

The following incidents are worthy of note :

(1) These insurances are effected the ship being "lost or not lost;" (2) the course of the voyage must not be deviated from ; and (3) the ship must be seaworthy.

Distinguish between a total and a partial loss.

The former kind explains itself, and is subdivided into (1) actual, and (2) constructive, which latter is so great as actually to amount to the former, and under which circumstances the insured must abandon all claims to his underwriters.

In the case of a partial loss the underwriter pays *pro ratâ* ; of course in the case of a total loss he pays in full.

Distinguish between salvage and general average.

Salvage is the sum paid for assisting or saving the cargo or ship when in distress, and is a charge to be borne by the underwriter.

General average is a contribution which falls on the ship, freight and cargo towards recouping losses on cutting masts away or throwing cargo over board for the safety of the ship and the passengers, subject to two conditions—(1) The ship must be saved ; (2) the goods thrown overboard must have been properly

stowed. The contributors then fall back in their turn upon the underwriters.

Can the assignee of a life policy sue in his own name ?

He can, by 30 & 31 Vict. c. 144 ; but it must be remembered that by 14 Geo. III. c. 48, amended by the above statute, that no insurances can be made on lives, or on any other event, in which the party insuring has no interest, and that the name of such interested party must be inserted.

Can a wife effect an insurance on her husband's life ?

She can, by the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), for her separate use, and a married man may effect an assurance on his own life for the benefit of his wife, which will be held for her separate use and free from his debts, &c.

Under what circumstances will a premium be refunded ?

When the contract becomes void *ab initio* from a cause on the part of the insured which does not amount to an actual fraud.

What is a charter party ?

An agreement for the hire of the whole (or part of a *general*) ship for the conveyance of goods at a certain freight ; that is, a specified payment per ton or so much per month. It may be either under seal or not, and in the case of a general ship a bill of lading is usually executed and not a charter party.

What are lay and running days, and explain the term demurrage ?

The days for loading and unloading a vessel in the docks ; demurrage is the amount which has to be paid in the shape of a fine per day for the time the charterer detains the vessel beyond her proper lay and running days.

What is meant by the term freight payable pro ratâ itineris ?

It is where the shipowner carries the goods a portion of the voyage, from which the charterer derives a certain benefit, freight consequently is payable *pro ratâ* on an implied contract.

What is a debt as opposed to damages, and what are the various kinds ?

A debt is a certain sum of money owing from one man to another as opposed to a claim for damages, it is consequently an ascertained sum ; whereas a claim for damages is unliquidated. Debts are : (1) upon simple contracts ; (2) specialties, *i.e.*, deeds ; (3) of record, *i.e.*, judgments, recognizances, &c.

CHAPTER VI.

TITLE BY BANKRUPTCY.

What statutes were the foundation of the Law of Bankruptcy ?

34 & 35 Hen. VIII. c. 4, 13 Eliz. c. 7, 4 Anne, c. 17, repealed by 6 Geo. IV. c. 16, which was subsequently repealed, and the law consolidated by 1 & 2 Will. IV. c. 56, and again by 5 & 6 Vict. c. 122. The recent Bankruptcy Act, 32 & 33 Vict. c. 71, (the Act of 1869) now governs the proceedings, and 32 & 33 Vict. c. 62 (the Debtors Act, 1869). The Acts relating to the old practice are all repealed by the Bankruptcy Repeal, and the Insolvent Court Act, 32 & 33 Vict. c. 83, except as to matters pending before the commencement of the Act.

Who is capable of becoming a bankrupt ?

All debtors, whether traders or non-traders. The former may be defined as a person owing another a liquidated sum either at law or in equity.

Traders are the various persons specified in the first schedule to the Act, and may generally be defined as persons using the trade of merchandise by way of bargaining, exchange, bartering, or commission, consignment or otherwise, in gross or retail, and persons who, either for themselves or as agents or factors for others, make their living by buying and selling, or buying or letting for hire, goods or commodities, or by the workmanship or conversion of goods or commodities.

It might be mentioned that stockholders are included in the Act.

Specify the several persons who are particularly exempted from the definition of the term trader under the Act.

A farmer, grazier, common labourer, or workman for hire, and a member of any partnership association or company which cannot be adjudged a bankrupt under the Act, *i.e.*, when such company is corporate or registered under the Companies Act, 1862.

What constitutes a trading?

To bring a person under the description of a trader for "buying and selling" there must be a purchasing and buying with the intention and object of selling, or in other words there must be a selling for purposes of profit or gaining a livelihood.

Can a married woman or an infant be made bankrupt?

Only when she carries on business of a sole trader by the custom of the City of London, or in respect of property of her own under the Married Woman's Property Act, 1870. Infants cannot be made bankrupt because they cannot trade, but privilege of parliament is abolished, and aliens, denizens and naturalized persons may be made bankrupts.

Describe the various acts of bankruptcy.

The following are applicable to traders and non-traders.

- (1.) In England or elsewhere making a conveyance or assignment to trustees for the benefit of creditors generally.
- (2.) In England or elsewhere making a fraudulent conveyance, gift, delivery, or transfer of property, or any part thereof.
- (3.) With intent to defeat or delay his creditors, departing out of England; being out of England, remaining out of England.
- (4.) Filing a declaration of insolvency.
- (5.) Service of a debtor summons for £50, and neglect to pay, secure and compound the same, in the case of a trader, for *seven days*, and in the case of a non-trader for *three weeks* after service.

The following are applicable to traders only :—

- (1.) Departing from his dwelling house, or otherwise absenting himself, with intent to defeat and delay his creditors.
- (2.) Beginning to keep house or suffering himself to be out-lawed.
- (3.) Suffer an execution to be levied by seizure and sale for a debt not less than £50.

After what lapse of time from the commission of the Act of Bankruptcy does a debtor cease to be liable to be made bankrupt?

Six months after the presentation of the petition.

State in general terms the purport of 13 Eliz. c. 5 with regard to fraudulent transfers.

The settlement must not be made by a person in insolvent circumstances or with a view to insolvency; consequently, it would be good if the settlor were in solvent circumstances at the time (but see *Ex parte Stephens in re Pearson*, 3 Ch. Div. 807.)

State the practical mode of proceeding to obtain an adjudication in bankruptcy.

By petition served on the debtor verified by affidavit. On the hearing the petitioning creditor must prove his debt, also the trading if necessary, and the act of bankruptcy. The Court, if satisfied with the proof, will adjudge the debtor a bankrupt, which adjudication is duly published in the *London Gazette*, and such other paper or papers as may be prescribed, and the production of the *Gazette* is evidence of the bankruptcy.

What must be the amount of the debt of a single petitioning creditor or the aggregate amount of two or more creditors to support a petition?

£50.

How is a petitioning creditor's debt defined in the Act, and what judicial interpretation has been put on that definition?

It must be a liquidated sum due at law or in equity, and a debt on which an adjudication in bankruptcy is founded must be a debt which existed at the time of the Act of Bankruptcy, and

not payable *in futuro* (*Ex parte Hayward in re Hayward*, L. R. 6 Chan. App. 546.)

What power of discovery has the court as to a bankrupt's property after the order of adjudication ?

That of summoning before it the bankrupt or his wife, or any person known or suspected to have in his possession any of the estate of the bankrupt, or supposed to be indebted to him, or any other person capable of giving information as to the bankrupt, his dealings or property ; and if he refuses after having had a reasonable sum tendered to him, he may be apprehended and brought up for examination either upon oath or by written interrogatives.

Describe the course of procedure at a first meeting of creditors under an order of adjudication.

Ten days' notice of the meeting must be first given in the *London Gazette*, or in a local paper as the case may be, at which the creditors by resolution appoint a trustee, settle on his security, appoint a committee of inspection, and give directions as to the administration of the property by the trustee, and the bankrupt produces a statement of his affairs.

In whom does the property vest after adjudication ?

In the registrar of the Court until a trustee is appointed, and then in the trustee.

State when and how creditors may prove their debts.

Either at the first or any other duly summoned meeting of creditors, or any time before the meeting, by delivering or sending through the post in a prepaid letter to the registrar before the appointment of the trustee, and afterwards to such trustee, an affidavit according to the form in the schedule to the rules, and no creditor can vote at any meeting until such proof be made.

What are the duties of the creditor's trustee ?

His duties are (1) to summon meetings ; (2) to consult the committee of inspection ; (3) to declare and distribute dividends ;

(4) to transmit his statements to the comptroller ; (5) pay over all moneys ; (6) report to the Court when all the bankrupt's property has been realized.

What are some of the powers of the creditor's trustee ?

- (1.) To receive proof of debts.
- (2.) To carry on the business of the bankrupt.
- (3.) To bring and defend actions.
- (4.) To deal with the bankrupt's entailed property.
- (5.) To execute powers of attorney, deeds, and other instruments.
- (6.) To sell the bankrupt's property.
- (7.) To give receipts.
- (8.) To prove debts, draw dividends, and appoint the bankrupt himself to superintend the management of the property.

When does the court publicly examine the bankrupt on his statement of affairs ?

On any day within forty days from the date of the first meeting, of which notice is duly given in the *London Gazette* and any other papers the Court may direct, such day being of course subject to adjournments. The bankrupt must attend and make an affidavit as to the truth of his statement, and that he has justly and truly discovered all his estate, that he has delivered all the same over to the trustee, and that none has fraudulently been removed, concealed, or destroyed.

By the provisions of the Debtors' Act, 1869, a bankrupt may render himself liable for a misdemeanor at common law. State some of the offences which would be so considered, and what punishment would be awarded to him.

- (1.) Non-discovery of property and its dispositions.
- (2.) Non-delivery to his trustee of such parts of his property as are in his custody or control.
- (3.) Non-delivery of all books, &c., which relate to his affairs.
- (4.) After the presentation of a bankruptcy petition against him, or within four months next before the same, concealing any part of the property to the value of £10 or upwards, or of debts due to him.

(5.) Within the same period removing property of the same value.

(6.) Making any material omission, in any statement relative to his affairs, &c., &c.

The presentation in the above cases if done with intent to defraud is imprisonment for two years with or without hard labour.

Mention some other offences which are also misdemeanors and for which he is, on conviction, only liable for a year's imprisonment, with or without hard labour.

If with intent to defeat his creditors he shall (1) obtain credit by false pretences or by means of any other fraud ; (2) making any gift, delivery or transfer of, or any charge on his property ; (3) concealing or removing part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

Mention in what case a bankrupt may be guilty of felony, and what is the punishment.

Absconding four months before the presentation of the petition, or after such presentation, with property to the amount of £20 or upwards, which ought by law to be divided amongst his creditors. The punishment is imprisonment for any term not exceeding two years with or without hard labour.

When and under what circumstances is a bankrupt entitled to an order of discharge ?

By sect. 48, at the close of the bankruptcy or at any time during its continuance, with the assent of the creditors testified by a special resolution.

The bankrupt is not entitled to it unless (1) either that a dividend of not less than 10s. in the £ has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee ; or (2) that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay 10s. in the £, in their opinion arose from circumstances for which he cannot be held responsible, and that they desire that an order of discharge should be granted to him.

Are there any debts or liabilities of a bankrupt for which an order of discharge will not release him ?

- (1.) Those incurred by fraud or breach of trust, or whereof he has obtained forbearance by means of fraud.
- (2.) Debts due to the Crown.
- (3.) Debts incurred by any offence against statutes relating to the revenue, or on bail bonds entered into by him for the appearance of any person charged therewith, unless discharged by the Treasury Commissioners in writing.

Under what circumstances may the Court suspend or withhold the order of discharge ?

- (1.) If the Court is satisfied by special resolution or other evidence that the bankrupt has not given up his property.
- (2.) That he has been prosecuted under the Debtor's Act, 1869.

What is the status of an uncertificated bankrupt ?

No portion of a debt proveable under the bankruptcy is enforceable against the bankrupt's property until the expiration of three years from the close of the bankruptcy, and if during that time he pay to his creditors such additional sum as will, together with the dividend paid under his bankruptcy, make up 10s. in the £, he is entitled to an order of discharge; otherwise, any balance remaining unpaid in respect of any debt proved under the bankruptcy (without interest), shall be deemed an existing debt in the nature of a judgment debt, and may be enforced as such.

State generally what property is divisible among the bankrupt's creditors.

- (1.) All such property as may be vested in the bankrupt at the commencement of the bankruptcy, or which may be acquired by or devolve on him during its continuance.
- (2.) The capacity to exercise or take proceedings for exercising all powers over property which might be exercised by the bankrupt for his own benefit at the

commencement of his bankruptcy or during its continuance.

- (3.) All goods and chattels at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner.

What property of the bankrupt does not devolve upon the trustee for division amongst the creditors ?

- (1.) Trust property.
- (2.) Trade tools, necessary wearing apparel and bedding for his wife and children, to the value of £20 inclusive.
- (3.) The right of nomination to a vacant ecclesiastical benefice.
- (4.) Property earned after the commencement of the bankruptcy by personal labour.
- (5.) A right of action for a personal wrong.
- (6.) Offices which cannot be legally sold.
- And (7.) Pay or half-pay under the Crown.

By what means can the trustee of the estate relieve it of property which is onerous, and to what class of property do his powers in this respect extend ?

He may by writing disclaim such property, and upon the execution of such disclaimer the property disclaimed, if a contract, shall be deemed to be determined; if a lease, to have been surrendered; and if shares, forfeited from the date of the adjudication; and if any other species of property it reverts to the person entitled on the determination of the estate or interest of the bankruptcy; if no such person be in existence the estate or interest is to remain in the bankrupt.

And any person injured by the disclaimer is a creditor, and may prove to the extent of his injury.

An adjudication being made, to what date shall it be deemed to have relation ?

The time of the act of bankruptcy being completed on which

the order of adjudication is made, or if more acts of bankruptcy than one, it relates back to the time of the first of the acts of bankruptcy, proved to have been committed within twelve months next preceding the order of adjudication.

Can any transactions be entered into with the bankrupt which are protected against the title of the trustee ?

- (1.) Payments made *bonâ fide* and for value to such bankrupt ;
- (2.) Payments or delivery of money or goods belonging to the bankrupt and made to him ;
- (3.) Contracts or dealings with the bankrupt made *bonâ fide* and for value,

assuming that the above are made before the date of the order of adjudication, and without notice of any act of bankruptcy.

Are there any transactions entered into by, or in relation to, the property of the bankrupt that are protected against the trustee ?

- (1.) Dispositions or contracts with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise made by any bankrupt *bonâ fide* or for value ;
 - (2.) Any execution or attachment against the land of the bankrupt executed in good faith by seizure ;
 - (3.) Any execution or attachment against the goods of any bankrupt executed in good faith by seizure and sale,
- provided the above are made before date of adjudication, and without notice of an act of bankruptcy.

What is a fraudulent preference, and is it an act of bankruptcy ?

Any conveyance or transfer of property, or any act done by any person unable to pay his debts, with a view of giving any particular creditor a preference over his other creditors, provided the same be done voluntarily and without pressure on the part of the creditor.

It is an act of bankruptcy, and if such person become bankrupt within *three months* after date, it is deemed fraudulent and void as against the trustee. But it is not to affect the rights of *bonâ fide* purchasers, payees, or incumbrancers for value.

When is the trustee in bankruptcy entitled to the proceeds of sale of goods seized and sold by the sheriff under an execution before the presentation of the petition of bankruptcy ?

Where the bankrupt is a trader and the debt exceeds £50, and notice is served within fourteen days after the sale upon the sheriff of the presentation of a bankruptcy petition.

What are the provisions of the Bankruptcy Act, 1869, as regards voluntary settlements, and are different classes of persons differently affected by those provisions ?

Any voluntary settlement of property made by a trader, with the exception of a settlement made on or for his wife or children, of property which has accrued to him after marriage in right of his wife, shall, if the settlor become bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt's estate appointed under the Act ; and if the settlor becomes bankrupt at any subsequent time within ten years after the date of such settlement, it is also to be void as against such trustee, unless the parties claiming thereunder can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement.

Can trustees of a marriage settlement prove in a husband's estate in respect of his covenant to bring money into settlement after marriage ?

No they cannot, if a trader, because section 91 of the Act expressly enacts that any covenant or contract made by a trader in consideration of marriage for the future settlements upon or for his wife or children of any money or property in which he had not at the date of his marriage any estate or interest, and not being money or property of, or in right of his wife, shall upon his becoming bankrupt (before such property or money has been actually transferred or paid pursuant to such contract or covenant) be void as against the trustee.

To whom must the trustee render an account, and when ?

He has to call a meeting of the committee of inspection once at least every three months, when they audit his accounts and

determine whether any and what dividend is to be paid, then forthwith, after the audit, he forwards the certified statements to the Comptroller in Bankruptcy adding his certificate that it is the copy certified by the committee. He also forwards an office copy of the statement of affairs filed by the bankrupt, showing therein, in red ink, the difference between the sums stated by the bankrupt and the sum realised or estimated by the trustee to be realised, and states the reason why any property not realised has not been realised.

What is the creditors' trustee to do with all moneys coming to his hands, and how long may he keep more than £50 in his hands without incurring any liability of interest?

He pays all sums received by him from time to time into such bank as the majority of creditors, in number and value, appoint, and, failing appointment, into the Bank of England, and he must not keep more than £50 in his hands more than ten days, otherwise he is liable to (1) interest at £20 per cent. ; (2) to be dismissed by the Court on the application of any creditor without remuneration.

How are the debts paid in bankruptcy?

Pari passu and rateably; that is all debts, both legal and equitable, are on an equality as also specialties and simple contracts, and they must all abate in proportion to the amount of the dividend declared.

Are there any exceptions to the last mentioned rule?

- (1.) A secured creditor either gives up his security and proves for his debt or he retains it, and after realising it or giving credit for the value proves for the deficiency.
- (2.) A landlord may distrain after the bankruptcy for one year's rent accrued, due prior to the order of adjudication and proves for the overplus.

The following debts have priority :—

- (3.) Parochial and other local rates.
- (4.) Assessed taxes, land tax, and property or income tax not exceeding in the whole one year's assessment.

- (5.) All wages and a salary of any clerk or tenant at the date of the adjudication not exceeding four months and not exceeding £50.
- (6.) All wages of any labourer or workman in like manner not exceeding two months.

What kind of debts are provable under a bankruptcy ?

A "debt provable in bankruptcy" shall include any debt or liability by the act made provable in bankruptcy. Demands in the nature of *unliquidated* damages arising otherwise than by reason of a contract or promise, are not provable, and no persons with notice of the act of bankruptcy can prove for debts subsequent to the date of the notice. Otherwise all debts and liabilities, present or future, certain or contingent, due at the date of the adjudication or during the contingency of the bankruptcy, by reason of any obligation incurred previously to the date of the order of adjudication, are deemed debts "provable in bankruptcy," subject in the case of such contingent debts or others, not bearing a certain value, to an estimate to be made according to the rules of the Court, *i.e.*, by the trustee or the Court, with or without a jury.

Define the term liability as made use of in the Act.

Any compensation for work or labour done ; any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, &c., whether such breach does or does not occur, or is or is not likely to occur before the close of the bankruptcy, and generally it includes any express or implied engagement or undertaking to pay money or money's worth, whether the amount be fixed or unliquidated, present or future, certain or dependent on contingency, capable of being ascertained by fixed rules, or assessed only by a jury, or as a matter of opinion.

By what means other than bankruptcy can a debtor obtain a discharge from his debts ?

(1) By liquidation by arrangement, and (2) by composition with creditors.

What is the mode of proceeding to be adopted by a debtor who is desirous that his affairs should be adjusted by liquidation by arrangement, or by composition ?

He should present a petition either to the London or a proper local Court, stating that he cannot pay his debts, and that he wishes to liquidate by arrangement or composition, whereupon a general meeting of his creditors will be summoned (within one month after the presentation of the petition), who may, by special resolution, *i.e.*, a majority in number and three-fourths in value, present personally or by proxy, determine whether the affairs of the bankrupt shall be liquidated by arrangement or in bankruptcy, or may reject such proposition. If the resolution is passed to liquidate, a trustee is appointed with or without a committee of inspection. The bankruptcy proceeds in the ordinary way, but the discharge is granted by the special resolution of the creditors and not by the Court.

If a composition is accepted it must be duly registered, otherwise it is invalid, and when registered it binds all the creditors in the bankrupt's statement produced at the first meeting but not the others.

CHAPTER VII.

TITLE BY WILL AND ADMINISTRATION.

How long have testaments subsisted in England ?

From time immemorial, whereby the deceased was at liberty to dispose of his personalty, reserving anciently to his wife and children their *reasonable part* of his effects.

To whom did the goods of intestates belong ?

Anciently to the king, who granted them to prelates to be disposed in pious uses; but on abuse of this trust in the times of popery the legislature compelled them to delegate their power to administrators expressly provided by the law, who in pursuance

of the statute 31 Edward III. c. 11 were the next and most lawful friends of the deceased, *i.e.*, next of blood not under disability; and by 21 Hen. VIII. c. 5, administration might be granted to the widows or the next of kin or both, with a power of choosing any one of two or more kindred of the same degree.

State generally the jurisdiction conferred by the Court of Probate Act, 1857 (20 & 21 Vict. c. 57, amended by 21 & 22 Vict. c. 95) on the Court of Probate.

It is a court of record, having the same powers, and its grants and orders having the same effect as the Prerogative Court of the Archbishop of Canterbury, subject to the Acts and the Rules and Orders.

Who may be testators ?

All persons except (1) idiots; (2) lunatics, except during a lucid interval; (3) persons *non compos mentis*; (4) persons under duress; (5) married women, with certain exceptions; (6) infants; (7) traitors and felons against whom sentence of death is recorded.

Under what circumstances may a married woman make a will ?

- (1.) As regards personal estate, with the assent of her husband.
- (2.) Of goods vested in her as executrix.
- (3.) Of property over which she has a power of appointment.
- (4.) Property settled to her separate use, or so declared under 33 & 34 Vict. c. 93.
- (5.) If her husband is banished or transported; and
- (6.) If she has a protection order or has been judicially separated.

At what age may a person make a will ?

By the 7th section of 1 Vict. c. 26 no person can make a will who is under the age of twenty-one years.

How ought a will of personal property to be made and executed ?

Formerly they might either be (1) written; or (2) nuncupative; the former being published by the testator and the latter dependant upon oral testimony. Under the Statute of Frauds writing was necessary, but no witnesses, for a will of personal estate; but

by 1 Vict. c. 26, now a will either of realty or personalty must be signed by the testator, in the presence of two witnesses present at the same time, as in the case of real property.

In regard to the Act of 1861, "To amend the law with respect to the wills of personal estate made by British subjects," in the case of a will of a British subject made out of the United Kingdom, dying after that Act, by the rule of what country must the will be executed, and in what respect is there any, and what option, and is or is not the will of a British subject made in the United Kingdom affected by his domicile?

By 24 & 25 Vict. c. 114, s. 1, it is enacted that every will and other testamentary instrument made out of the United Kingdom by a British subject (whatever may be his domicile at the time of making the same or at the time of death) shall as regards *personal* estate be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either (1) by the law of the place where the same was made; (2) the law of the place where such person was domiciled when the same was made; or (3) by the law then in force in that part of her Majesty's dominions where he had his domicile of origin. And by sect. 2, wills of personal estate made within the United Kingdom by a British subject (whatever his domicile) are good if executed according to the forms required by the laws then in force in that part of the kingdom where the will was made.

What is an executor, and who may be appointed?

An executor is a person to whom a man by his will commits the execution thereof. All persons may be executors, including married women and infants, but the latter cannot act unless they are of full age.

What is probate of a will?

Simply the legal authentication of the document, or in other words, a certificate of the genuineness of the will.

How used a will to be proved?

Either in common form, which was on the oath of the executor

before the ordinary (*i.e.*, the bishop of the diocese) or his surrogate, or *per testes* in case of a dispute as to validity; the will was deposited in the registry, and a copy on parchment handed over to the executor with a certificate of proof. Should, however, the deceased have had *bonâ notabilia*, that is, chattels worth a hundred shillings in two dioceses, the probate was granted before the metropolitan of the district; hence, the prerogative courts and offices in Canterbury and York; but by 20 & 21 Vict. c. 77, all duties hitherto performed by the ordinaries, or in such prerogative courts in respect of probates, &c., is performed by the Court of Probate without reference to the locality of the property, and there are also district registries in which non-contentious and *common form* probate business may be carried out, at the option of the representatives.

By whom is the grant of letters of administration now made?

By the new Court of Probate, under 20 & 21 Vict. c. 77.

Who is entitled to take out letters of administration?

(1) The husband in the case of his deceased wife's personal estate; (2) and administration might be granted in the case of the death of the husband to the widow of the deceased or to the next of kin, or to both at discretion; (3) if none of the next of kin will take out administration, then a creditor may; (4) or the Court may direct some one to do so, or grant letters *ad colligendum bonâ defuncti*; and (5) in the case of a bastard the appointee of the Crown.

Show in what order of degree administration will be granted to the next of kin.

(1) Husband or wife; (2) child or children; (3) grandchild or grandchildren; (4) great grandchildren or other descendants; (5) father; (6) mother; (7) brothers and sisters; (8) grandfathers or grandmothers; (9) nephews and nieces, uncles, aunts, great grandfathers or great grandmothers; (10) great nephews, great nieces, cousins-German, great uncles, great aunts, great grandfather's father and so on, according to proximity of kindred, all those who are in the same degree being equally entitled.

It may be mentioned the half blood is admitted as well as the

whole, and there is no distinction made between kindred *ex parte paternâ* and *ex parte maternâ* in the same degree.

What is the meaning of a grant of administration, cum testamento annexo, and in what cases does it arise ?

It is a similar grant as in cases of intestacy, arising where the testator makes an incomplete will, without naming any executors, or if he names incapable persons, or if the executors named refuse to act or die intestate, and in this case the Court prefers the residuary legatee to the next of kin.

What is meant by a grant (1) cum testamento annexo et durante minore ætate ; (2) durante absentia ; and (3) pendente lite ?

- (1.) The former arises where a testator appoints an infant his sole executor ; he cannot exercise his office until he reaches the age of twenty-one, and during his minority administration will be granted to a person, generally the guardian, called administrator *durante minore ætate*.
- (2.) An administration *durante absentia* is when the executor is out of the realm ; or
- (3.) An administration *pendente lite* is when a suit is commenced in the Ecclesiastical Court touching the validity of the will.

Does the administrator of a sole executor, who dies intestate, represent the executor's testator ? if not, what should be done to clothe some person with the necessary power ? Would the case be different if there were an executor of a deceased executor ?

He does not ; for he is merely an officer of the Court, and has no priority or relation to the original testator, being only commissioned to administer the effects of the intestate's executor and not of the original testator. An administrator *de bonis non* of the testator must consequently be appointed. The executor of a deceased executor of a testator necessarily represents the original testator, for the interest vested in the testator's executor is continued and kept alive by his will, so that if there be a sole executor of a testator, the executor of such executor is the representative of the testator..

What security has an administrator to give, and if the condition of the bond has been broken, what is the course pursued by sect. 83 of the Act of 1857 ?

By the rules and practice of the Court he must give a bond if the estate is under £20 or £50 ; in all other cases, (with the exception of a husband administering to his wife,) with two sureties, the bond being in the penalty of double the amount the estate is sworn under. The husband or his representative gives a bond with one surety only, whatever the amount of the estate; should the condition of the bond be broken, the Court may, on motion or petition, order one of the registrars to assign the bond to some person to be named in the order, who is therefore entitled to sue in his own name and recover the amount mentioned in the bond, as a trustee for all persons interested.

Is there any distinction as to the duties incumbent on executors and administrators ?

- (1.) An executor is bound to perform the will, and the administrator is not, unless the grant is made *cum testamento annexo*.
- (2.) An executor may do many things before probate, but an administrator nothing till the grant of administration ; for
- (3.) The former derives his power from the will, the latter from the grant only.

What is an executor de son tort ?

Where a person not appointed an executor intermeddles so as to exceed offices merely of kindness and charity, such as locking up the goods and burying the deceased, thereby making himself liable to others without himself being armed with any legal rights, he cannot bring an action in right of the deceased, but one may be brought against him, strangers thinking that there is a will in which he is named executor but which he has not proved.

State generally the duties of an executor ?

(1) To bury the deceased ; (2) to prove the will or take out administration ; (3) to make an inventory ; (4) to collect the goods and chattels ; (5) to pay debts, observing the rules of

priority ; (6) to pay legacies, either general or specific if they be vested and not lapsed ; (7) to divide the clear undisposed-of surplus amongst the residuary legatees ; (8) in cases of intestacy to distribute the surplus according to the statute of distributions.

What are the rules of priority which the law has established with regard to the payment of debts by an executor ?

- (1.) Reasonable funeral and testamentary expenses.
- (2.) Debts due to the Crown by specialty.
- (3.) Debts by particular statutes preferred to others.
- (4.) Debts of record.
- (5.) Simple contract and specialty debts equally (32 & 33 Vict. c. 46).

What is the rule as to executors and administrators joining in receipts ?

As the executors have a joint and several interest one may give a receipt ; but as to administrators it would seem they must all join, because they have only a joint authority (*Jacomb v. Harewood*, 2 Ves. 265).

What is an executor's right of retainer, and in what order ought he to pay debts ?

The right an executor (same as executor *de son tort*) has is to retain, out of the assets coming to his hands, his own debt as against others of an equal degree. So long as the debts are of equal degree he may pay which he chooses, save in the case of a creditor obtaining judgment ; but he cannot pay a debt of a lower as against a debt of a higher degree without making himself personally liable.

If the executor pays all debts and then the creditor sues him, what is his defence ?

He should plead *plene administravit*, leaving the creditor to take a judgment for future assets *quando accederint*.

What is a legacy and what are the various kinds ?

It is a gift or bequest of property by will conferring an inchoate

right on the legatee, which is perfected by the executor's assent to the legacy.

Legacies are (1) general ; (2) specific ; (3) vested ; and (4) contingent.

Distinguish between general and specific legacies. What is the rule as to abatement ?

(1.) A general legacy is a legacy of a sum of money, as £100.

(2.) A specific legacy is a particular piece of plate, presented, for instance, as a testimonial.

The former abates proportionately on a deficiency, the latter only for payment of debts.

What is the ademption of a legacy ?

It is an implied revocation of it by the testator's dealing with the subject matter of the legacy without having altered his will, and it can only arise in the case of a specific legacy, *e.g.*, the testimonial, assuming it to be bequeathed first and then sold.

What is meant by a legacy lapsing, and what are the exceptions ?

Falling into the residue by reason of the death of the legatee in the lifetime of the testator. The exception arises under the 33rd section of the Wills Act, 1 Vict. c. 26, and is, in the case of a bequest to a child or other issue of the testator ; there if the child dies in the testator's lifetime but leaves issue, the bequest does not lapse, but takes effect as if the death of the legatee had happened immediately after that of the testator, unless a contrary intention appear in the will.

Distinguish between a vested and a contingent legacy ?

A legacy is said to be vested when an immediate interest passes to the legatee ; but if it is given on the happening of some uncertain event, as if the legatee attains the age of twenty-one, it is contingent, though if it is merely payable at twenty-one it is vested, for it is "*debitum in presenti* though *solvendum in futuro*."

What is the rule as to legacies carrying interest ?

Unless the legacy (due immediately) is charged on land, interest

does not run till a year after the death of the testator, and then at £4 *per cent. per annum*.

Can a legacy be bequeathed to A. and if he dies without issue then over to B. ?

It can, by 1 Vict. c. 26, sect. 26, because now such a bequest is not indefinite, but simply points to the failure of issue in the lifetime or at the death of A., unless a contrary intention appear on the face of the will.

Is the executor entitled to the residue of the testator's estate ?

Previously to the statute 11 Geo. IV. & 1 Will. IV. c. 40, he was, unless a contrary intention appeared ; now the executors are trustees for the next of kin (if any) unless a contrary intention is shown by the will.

State the general rule for the distribution of personal estate under the statute (22 & 23 Vict. c. 10).

If a man dies intestate leaving a wife and children, one-third goes to the wife and the residue to the children equally. If he leaves no children then a half to the widow and the other half to the next of kin and their representatives *per stirpes*. If there is no widow then the whole goes to the children, and if there are no widow or children to the next of kin equally and their representatives, the latter taking *per stirpes*. But by 22 & 23 Car. II. c. 10, sect. 7, there is no representation amongst collaterals after a brother's and sister's children.

Distinguish between distribution per stirpes and per capita as regards the next of kin.

If they take by representation they take *per stirpes* ; if in their own right *per capita*.

Are there any special customs existing in any city or province as to distribution ?

There used to be in the City of London and in the province of Canterbury, but they are abolished (except so far as the estates of persons dying on or before the 31st of Dec., 1856,) by 19 & 20 Vict. c. 94, which enacts that after the above date the distribution

of the personal estate of intestates in England and Wales shall take place according to the rules prevalent in the province of Canterbury.

CHAPTER VIII.

MIXED SUBJECTS OF PROPERTY.

What are emblements, and to whom do they belong ?

Those vegetables which are raised annually by labour and manurance, which are considerations of a personal nature ; such as hops, hemp, flax, &c. They go to the executor or administrator as against the heir or remainderman, but not as against a devisee. They may be distrained upon for rent, by 11 Geo. II. c. 19, and they are liable to be taken in execution.

What are fixtures, and to whom do they belong ?

Articles fixed in the ground to a house, or to some substance formerly part of the freehold, such as windows, grates, palings, steam engines, &c., the maxim being, *quicquid plantatur solo, solo cedit*.

Fixtures which are put up for the purposes of trade, ornament, or domestic use ; (1) as between the heir or devisee, and the personal representative of the tenant in fee belong to the latter, if they can be removed without material damage ; (2) as between the owner of a particular estate and the remainderman they belong to the former ; and (3) as between landlord and tenant to the latter, if the removal would not materially damage the freehold, subject to 14 & 15 Vict. c. 25, in the case of agricultural fixtures.

What is the rule as to agricultural fixtures ?

By 14 & 15 Vict. c. 25, if not put up by the tenant in pursuance of a covenant for that purpose contained in the lease, they may on giving one month's written notice to the landlord to take them at a valuation, to be arrived at in the ordinary way, be

removed by such tenant by consent in writing of the landlord, provided he do not injure the freehold, or if he do it must be restored.

Are fixtures liable to be taken in execution or on a distress for rent?

A tenant's fixtures may, because he can remove them, but not a freeholder's; they cannot be distrained for in any case.

What species of property are shares in public undertakings connected with land?

Real estate as far as the land goes, or the right of using it, but the shares of the investors are personalty.

Mention some things personal which partake of the qualities of things real.

- (1.) Animals *feræ naturæ*, if confined but not domesticated.
- (2.) Charters, deeds, court rolls, and other evidences of title, together with the deed boxes.
- (3.) Coat armour, &c.
- (4.) Monuments or tombstones, the latter, though fixtures, do not pass with the land, but belong to the heir or devisee of the ancestor.

What are heirlooms, and whence is the term derived?

They are such goods and personal chattels as go by *special custom* to the heir along with the inheritance, and not to the executor of the last proprietor. The termination *loom* is of Saxon origin, signifying limb or member, so that an heirloom is a limb or member of the inheritance.

It must be remembered they cannot be devised.

BOOK III.

RIGHTS IN PRIVATE RELATIONS.

CHAPTER I.

MASTER AND SERVANT.

What are the private economical relations of persons ?

(1) Master and servant; (2) husband and wife; (3) Parent and child; (4) guardian and ward.

What are the various kinds of servants ?

The first relation mentioned in the last answer may subsist between a master and four species of servants, for slavery is unknown to our laws, viz:

- (1.) *Menial* servants (derived from the Latin *intra mœnia*), who are hired.
- (2.) Apprentices who are bound by indentures.
- (3.) Labourers who are casually employed, and workmen engaged in trades or manufactures.
- (4.) Stewards, bailiffs, and factors who are rather in a ministerial state.

Upon what terms is a general hiring of domestic servants construed to be ?

It is a hiring for a year, and so on from year to year, defeasible by custom at the option of either party by giving a month's warning or paying a month's wages. In the case of a governess, tutor, or clerk, a three months' notice is sometimes required; and sometimes a reasonable notice to expire at the end of the year.

What are the principal statutes relating to master and servant as regards service, &c.?

30 & 31 Vict. c. 141, continued by 36 & 37 Vict. c. 75, giving a justice of the peace jurisdiction as regards the service to be performed, or any misbehaviour or ill-treatment, &c.; and a power to imprison for three months with or without hard labour.

What is the derivation of the term apprentice, and how does the service arise?

It is derived from the French *apprendre*, to learn, and an apprentice is usually bound for a term of years by an indenture to serve his master, and to be maintained and instructed by him; this is usually done to a person in trade in order that the apprentice may learn a business, and sometimes a large sum is given with him as a premium for instruction.

In what manner does the relation of master and servant affect each party respectively?

The servant is entitled as a general rule to food and lodging, and he cannot be turned away in case of sickness without his proper notice or pay; and by 24 & 25 Vict. c. 100, s. 26, if any master who is legally liable refuses to provide food, clothing, or lodging for an apprentice or servant, or wilfully refuses or neglects to do so, or maliciously endangers the life, or permanently affects the health of his apprentice or servant, he is guilty of a misdemeanour punishable by imprisonment for two years with or without hard labour, or penal servitude for five years.

On the other hand, a master as a general rule is not obliged to find medicine, &c., for his *servant*, neither is he liable for an injury in the course of a common employment resulting from the negligence of a fellow servant; the servant can be discharged at once for wilful disobedience or moral misconduct, and the master is not compelled to give his servant a character, but if he does, it must be a true one.

How are masters protected from the consequences of false characters?

By 32 Geo. III. c. 56, which renders both the giver and the

receiver liable to a penalty of £20, and in default imprisonment with hard labour.

How are strangers affected by the relation of master and servant?

- (1.) The master may maintain (*i.e.*, abet and assist) his servant, and *vice versâ* in an action against a stranger.
- (2.) He may bring an action against any one for beating, maiming, or seducing his servant on proof of loss of service.
- (3.) A master may justify an assault in defence of his servant and *vice versâ*; and,
- (4.) If any one *knowingly* entices away a servant or apprentice, and retains him in his service after due notice that he is under an *unexpired* contract of service, he is liable to an action at the suit of the master.

What are the various matters a servant may perform on behalf of his master?

The general rule is laid down on the principle of agency, that the master is liable for the act of his servant if performed by his express or implied authority, the maxim being "*qui facit per alium, facit per se*," subject to the fact of being actually employed in the master's service; and a master is not liable for his servant's criminal acts unless performed by his encouragement.

By an authorised course of dealing, a servant was in the habit of ordering goods from a tradesman on his master's credit; certain goods were so ordered and supplied, and the servant was afterwards furnished by his master for the money to pay for them; the servant omitted to pay for the goods: who is liable to the tradesman for the price of the goods, and why?

The master; because he was in the habit of having the goods on credit; had he always paid cash the tradesman would have had to suffer and not the master, because under these circumstances the servant would, though acting in the master's employ, have been acting in a manner contrary to his master's authority, although in reference to the service.

Under what circumstances is the servant himself free from personal liability?

- (1.) When employed to transact business for a man, because he is *quoad hoc* a servant.
 - (2.) In cases of purchases presumably for his master, if he show sufficient authority.
 - (3.) When he is entrusted to pay money to a third party; and
 - (4.) for an act of negligence in course of service where the dealing was with the master.
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CHAPTER II.

HUSBAND AND WIFE.

On what statute was the jurisdiction of the Court for Divorce and Matrimonial Causes founded, and what was the primary jurisdiction conferred on it?

By the statute 20 & 21 Vict. c. 85, and by that Act all jurisdiction which, before the passing of the Act, was exercisable by the Ecclesiastical Courts, became vested in Her Majesty and exercised by the above Court held before the Lord Chancellor and Judges of the Superior Courts of Westminster, and the Judge of the Probate Court made Judge in Ordinary of the Divorce Court, and even when sitting alone was entitled to exercise the powers of the full Court; its jurisdiction has been enlarged by 21 & 22 Vict. c. 93, and it has now been merged into the Fifth Division of the High Court by 36 & 37 Vict. c. 64, sect. 34.

Under what circumstances can a marriage be duly contracted between persons?

(i.) Where the parties consent; (ii.) free from canonical impediments which make it voidable; (iii.) free also from the civil impediments which are (1) of prior marriage; (2) of want of reason; (3) proximity of relationship, and (4) want of age, either of which make it totally void, and (5) consent of parents is

required when either of the parties is a minor. The marriage must also be celebrated by a clergyman in due form and place.

Within what degrees are marriages prohibited on the ground of consanguinity or affinity ?

Those within the third degree inclusive. A man's parents are counted as one degree in collaterals ; his brothers and sisters, grandfather and grandmother are in the second degree, and his uncles and aunts, nephews and nieces are in the third degree.

How ought a marriage to be legally solemnised ?

(1) By the due publication of banns for three Sundays in the parish church or public chapel of the parish in which the parties reside ; (2) by licence, or (3) by registrar's certificate with or without licence.

How many kinds of licences are there ?

- (1.) The special licence granted only by the Archbishop of Canterbury.
- (2.) The common licence which is granted by the ordinary through his chancellor and surrogates.

It must be remembered that the marriage must take place within three months after the publication of the banns or grant of the licence.

How is a common licence obtained ?

By any person (1) on the payment of fees ; (2) declaring on oath that one of the parties to be married has for the preceding fifteen days had his or her usual place of abode within the parish or district of the church or chapel in which the marriage is to be solemnised ; (3) that there is no lawful impediment known to the deponent ; and (4) if either party be a minor, that the consent of the proper parent or guardian (if any) has been obtained.

What are the various kinds of marriages before the superintendent registrar ?

- (1.) By the registrar's certificate without licence.
- (2.) By his certificate with licence, as fully detailed in 6 & 7 Vict. c. 85 and 19 & 20 Vict. c. 119.

Show how husband and wife become one person in the eye of the law.

- (1.) The husband cannot grant anything to his wife or enter into a covenant with her except by the intervention of a third person, or by means of the Statute of Uses.
- (2.) All contracts made between husband and wife before marriage are void ; but it must be remembered that the husband may devise or bequeath to his wife, and she may, when executing a power of appointment, convey an estate to him, and she may also be his agent.

Under what circumstances is a husband or wife competent witnesses for or against each other ?

- (1.) In prosecutions of treason against the husband.
- (2.) For violence done to the wife, the wife is a good witness, and by the operation of 14 & 15 Vict. c. 99, 16 & 17 Vict. c. 83, and 32 & 33 Vict. c. 68, husbands and wives are competent and compellable witnesses for or against each other, save (1) in criminal cases, and (2) in cases of disclosures of communications made during coverture.

What is the position of a feme covert during her coverture ?

(1) Her custody, and (2) her property to a certain extent belong to her husband; and (3) he may be materially affected by her contracts and other transactions.

How far does the custody of the wife belong to the husband ?

He can restrain her personal liberty to a certain extent, that is to say with a view to prevent her going into society of which he disapproves, or otherwise disobeying his rightful authority.

How far does the wife's freehold property belong to the husband ?

Subject to 33 & 34 Vict. c. 93, the husband has a freehold interest during the joint lives of himself and his wife, and he has a life estate by the curtesy after her death in all lands of which she died solely seised in fee or in tail if he has had by her issue born alive and capable of inheriting, and under 19 & 20 Vict. c. 120, he

might have leased this for twenty-one years ; but by the 8th section of the above Act (33 & 34 Vict. c. 93) where any freehold, copyhold, or customaryhold property shall descend upon any woman married *after* the passing of that Act as being an heiress or co-heiress of an intestate, the rents and profits, subject and without prejudice to the trusts of any settlement, belong to the woman for her separate use, and her receipt alone is a good discharge—otherwise they were not affected by the marriage by the husband's debts, and the husband and wife can convey under 3 & 4 Will. IV. c. 74.

What are the husband's rights in his wife's chattels real, her personalty in possession, and her choses in action ?

Subject to 33 & 34 Vict. c. 93, he receives the rents and profits of his wife's chattels real, and may dispose of them during the coverture, unless they are reversionary in such a way that they cannot possibly fall into possession during the coverture. If he survives his wife they are his own ; but if he predeceases her without having disposed of them during his life he cannot dispose of them by will. Her personalty in possession belongs to him absolutely. Her choses in action become his if he reduce them into possession during his life, but otherwise they survive to the wife.

But by the Married Women's Property Act her earnings, acquired after the date of the Act, and personalty to which she becomes entitled under an intestacy (thus including leaseholds), any sum not exceeding £200 under a deed or will, and deposits in savings banks, are to be her separate property in cases of women married after the passing of the Act. She may also have funds, shares in companies, stocks and shares in societies under certain conditions (one of which is, "no liability is to attach to the holding thereof") transferred into her name for her own separate use.

What are the wife's paraphernalia, and to whom do they belong ?

The apparel and ornaments of the wife, and a necessary bed suitable to her rank and degree, and the jewels usually worn by her, but not the family jewels, unless acquired by gift or bequest. The above she is entitled to on the death of her husband, should

he not have disposed of them during coverture in preference to his representatives, and her necessary apparel even against creditors.

Under what restrictions can married women dispose of their reversionary interests in personal estate (not settled to their separate use), and how did they acquire the power of disposal?

By 20 & 21 Vict. c. 57, married women may by deed, with the concurrence of their husbands, dispose of reversionary interests in personal estate acquired under any instruments made *after* the 31st of December, 1857. But the deed must be duly acknowledged by her in the mode prescribed by the Act for the abolition of fines and recoveries, and interests acquired by married women under their marriage settlements are excepted from the operation of the Act.

What rights as to property have been conferred by recent legislation upon wives deserted by their husbands, and how may they be secured?

By 20 & 21 Vict. c. 85, the wife may apply to a police magistrate, or to justices in petty sessions, or to the Court, for an order to protect any money or property she becomes possessed of after such desertion against her husband and his creditors, and if the order is made, such money or property belongs to the wife as if she were a *feme sole* (see also 21 & 22 Vict. c. 108, and 27 & 28 Vict. c. 44).

Mention some of the disabilities under which a married woman labours.

- (1.) She cannot make a will except of separate estate without her husband's consent as regards personalty, or in pursuance of a power as regards realty.
- (2.) She cannot enter into any contract except with her husband's authority express or implied.
- (3.) She cannot bring an action at law in her own name except under the 11th sect. of the Married Women's Property Act for the recovery of wages, &c., declared by the Act to be her separate estate.

What is the general rule as to the liability of the husband on his wife's contracts, during coverture entered into without his authority either express or implied?

The husband is bound to maintain his wife, therefore so long as they are living together he is liable for necessities ordered by the wife suitable to her state in life, as she is considered his authorised agent, provided the husband has not expressly refused such authority, as by warning tradesmen not to trust her, or by evidence that the husband has ordered his wife not to pledge his credit, although such order is not communicated to the tradesmen. But he is liable after a separation if he makes no provision for her; but not if she leave him against his will, or is sent away for adultery; and again, even supposing a husband and wife to be separated, provided the husband allows her a sufficient sum for her maintenance, he is not liable even though the tradesmen be ignorant of such allowance.

Under what circumstances may a wife contract, as a feme sole, so as to bind herself?

- (1.) When her husband is civilly dead, *i.e.* has been transported, or has not been heard of for seven years: or,
- (2.) Where she is a sole trader by the custom of the city of London.

When is it necessary to join the husband with the wife in an action?

Subject to 33 & 34 Vict. c. 93, actions should be brought during coverture by or against the husband and wife jointly. On her death the power to sue, or the liability to be sued, of her husband as such, determines, though of course, if he takes out letters of administration, he can sue or be sued as her administrator. But the husband is not by reason of any marriage between the 9th August, 1870, and the 30th July, 1874, liable for the debts of his wife contracted before coverture, but the wife can be sued alone, and she can maintain an action in respect of any property declared by the Married Women's Property Act, to be her separate property from and after the 30th July, 1874. The husband is liable so far as assets come to his hands.

Under what circumstances is a married woman protected from a criminal prosecution ?

Felonies committed in the presence of her husband, save (1) in the case of treason, murder, or manslaughter; or (2) when the husband was absent, or even committed in his presence, upon proof that she acted of her own free will.

Give some instances of the relations between husband and wife, which are recognised in equity and which do not exist at law.

- (1.) In some cases of post-nuptial contracts between husband and wife.
- (2.) The capacity of the wife to have separate estate by means of the intervention of a trustee.
- (3.) The wife's equity to a settlement.
- (4.) The wife's power or disposal of property settled to her separate use : and,
- (5.) Restraint on anticipation of her interest by the wife.

What would be the proper form of settlement on a proposed marriage ?

The intended husband's real estate would be vested in trustees to the use of the husband for life with an allowance of pin money for the wife, and a rent-charge or annuity by way of jointure if she should survive, the wife's fortune being either given to the husband or settled upon the younger children as their portion, instead of making the portion a charge on the realty, with remainders over to the wife's next of kin ; or the estate might be limited in strict settlement, *i.e.*, to the father for life with remainders to the first and other sons successively in tail with the remainders to the daughters as tenants in common in tail with cross remainders between them.

Distinguish between an ante-nuptial and post-nuptial settlement.

The former is made for a valuable consideration, *i.e.*, marriage, and therefore good not only as between the parties, but also against creditors, &c.

The post-nuptial settlement has no consideration, and is therefore as far as real estate is concerned, a voluntary conveyance within the meaning of 27 Eliz. c. 4, and consequently void as against subse-

quent *bonâ fide* purchasers for value, with or without notice ; and as regards real and personal estate worthless as against creditors under 13 Eliz. c. 5, to whom the settlor was indebted at the time to the extent of insolvency, and also as against future creditors.

Is a post nuptial settlement ever available ?

- (1.) If made in pursuance of articles entered into before the marriage.
- (2.) When made in pursuance of her right denominated wife's equity to a settlement.
- (3.) When made in consideration of a further portion paid to the husband by the wife's relations.

What is necessary to make a deed of separation good as between husband and wife ?

The intervention of a trustee with whom the husband covenants as to the wife's separate maintenance, and who also indemnifies the husband against the wife's debts, and with whom both parties covenant that they will not molest each other.

But it must be remembered that the separation must have been already effected, and that a woman separated from her husband is, as regards all property which she may acquire or which may come to her, and as regards creditors, &c., in the position of a *feme sole*.

How may a marriage be dissolved ?

- (1) By death; (2) by divorce.

What are the principal provisions of the new Divorce Acts ?

- (i.) The court may decree a judicial separation instead of a divorce *a mensâ et thoro*, which may be obtained by either party on the ground of (1) adultery; (2) cruelty; (3) desertion without cause for two years or upwards.
- (ii.) A divorce can be obtained by the husband on the ground of the adultery of the wife; by the wife on the ground of (1) the incestuous adultery; (2) bigamy coupled with adultery; (3) rape; (4) an unnatural crime; (5) adultery coupled with such cruelty as would have entitled her to a divorce *a mensâ et thoro* originally;

and (6), adultery coupled with desertion for two years and upwards.

But there must be no collusion, condonation, or connivance on the part of the petitioner; neither must the petitioner have been guilty of adultery, cruelty, desertion, misconduct, and unreasonable delay.

- (iii.) The decree for the divorce is a decree nisi, which cannot be made absolute until the end of six months from the pronouncing the decree nisi, during which period cause may be shown against it, and such decree nisi either reversed or sustained.
- (iv.) Within one month after the decree is made absolute there is an appeal to the House of Lords, after which the parties may marry again.
- (v.) An order may be made as to alimony and the custody and maintenance of the children.
- (vi.) The question of settlements may be gone into.

CHAPTER III.

PARENT AND CHILD.

What are the different sorts of children?

- (1.) Legitimate, being those who are born in lawful wedlock, or within a competent time after.
- (2.) Illegitimate, or bastards, being those which are not so.

What are the duties of parents to legitimate children?

- (1) Maintenance ; (2) protection ; (3) education.

How far is it the general duty of a parent to maintain his child?

Only so long as he is unable to work, through (1) infancy ; (2) disease ; (3) accident, which liability arises under the Poor Laws (see 43 Eliz. c. 2, 5 Geo. I. c. 8, 59 Geo. III. c. 12, sect. 26, 5 Geo. IV. c. 83, 4 & 5 Will. IV. c. 76, and 31 & 32 Vict. c. 122, sect. 37).

How far may a parent protect his children ?

- (1.) He may maintain and uphold their law suits and not be liable for the crime of "Maintenance."
- (2.) He may justify an assault or battery in their defence.

In what does the power of a parent consist principally ?

(1) In correction ; (2) in consent to marriage ; both may after death be delegated to a guardian, and the former also whilst the parent is living, to a tutor or master ; (3) the father is guardian of the property of his infant child ; and (4) he is entitled to the control of the person of his child, which latter power has been most materially assisted by 24 & 25 Vict. c. 100, sect. 56, which makes it a felony to abduct any child under fourteen, and by section 56 a misdemeanor to abduct any unmarried girl under sixteen, punishable respectively, as to the former offence by seven years' penal servitude or two years' imprisonment, and as to the latter, by two years' imprisonment only.

Has the mother any legal power over the child in the father's lifetime ?

(1) By 36 Vict. c. 12, the Court of Chancery has power to order that the mother may have access to and the custody of her infant under sixteen ; and (2) after the father's death she is entitled to the custody of it till twenty-one.

What are the duties of legitimate children to their parents ?

- (1) Obedience ; (2) protection ; and (3) maintenance.

What is the duty of parents to bastards, and how has this question been affected by law ?

Only that of maintenance. The mother is primarily liable to the child's support ; but if unable to support it she can, under 35 & 36 Vict. c. 65, amended by 36 Vict. c. 9, at any time before or within twelve months after, summon the putative father before the justices in petty sessions, who are empowered to make an order for payment of a weekly sum for its maintenance and education until the child shall die or attain the age of thirteen, or, if the justices so direct, the age of sixteen. The mother's testimony must be corroborated, and there is an appeal to the quarter sessions.

Point out some of the various disabilities of a bastard.

- (1.) He is not entitled to the surname of either his father or mother.
- (2.) He does not inherit property from his parents under the general denomination "child."
- (3.) He cannot be heir to any one, neither can he have heirs save of his own body; if, therefore, he die intestate and without lawful issue, his real and personal property will escheat to the Crown; but upon petition the right will be generally transferred to the nearest member of the family.

But it must be remembered that he is entitled to the birth settlement of his mother until he is sixteen, and the law of incest and the prohibited marriage degrees apply.

CHAPTER IV.

GUARDIAN AND WARD.

At what precise time is a person said to attain full age?

At any time on the day before that which is usually considered as the twenty-first anniversary of a man's birth, there being in law no fraction of a day.

How can an infant sue and be sued?

By guardian or *prochein amy*, i.e. his next friend who is not his guardian, and he defends by his guardian *ad litem*, and the Statute of Limitations is not binding on an infant.

Mention some of the leading disabilities of an infant.

He cannot:—

- (1.) Convey or purchase.
- (2.) Contract, as a general rule.
- (3.) Be a juror.
- (4.) Sit and vote in Parliament.

(5.) Be a bankrupt as a general rule; nor

(6.) Hold any public or judicial office.

It might, however, be noticed that (1) an infant can be an agent; (2) he may present to a living, assuming him to be the owner of the advowson; (3) he is a good witness if he understands the nature of an oath; (4) may take the oath of allegiance; and (5) consent to a marriage.

Assuming an infant to be a trustee or mortgagee, how is a conveyance of the property obtained?

By 13 & 14 Vict. c. 60, by a vesting order on petition to the Court of Chancery, or some one may be appointed to convey for him.

Can infants make binding settlements on their marriage in any and what cases?

They can under 18 & 19 Vict. c. 43, by the consent of the Court of Chancery obtained upon petition if males not under twenty, and if females not under seventeen.

What is the general rule as to the contracts of an infant?

(1.) Those for his benefit are good.

(2.) Those to his prejudice are void.

(3.) Those which are neither the one nor the other are voidable.

What is the rule as to the contracts of an infant?

Contracts for *necessaries* are binding on him, and by the word *necessaries* we do not only mean such articles as are necessary to the actual support of life, but the term extends to articles fit to maintain the particular person in the same state, station, and degree of life in which he is, and if an infant is residing under his parent's roof he is not ordinarily liable even for necessaries.

But it must be remembered that an infant is liable for a tort.

What are the various kinds of guardians?

(1.) By nature or the parents in respect of the person.

(2.) For nurture of the parents until fourteen in respect of the person.

- (3.) In socage assigned by the common law until the infant is fourteen, and is in respect of the person and the estate.
- (4.) By statute assigned by the father's will under 12 Car. II. c. 24.
- (5.) By election of the infant.
- (6.) By appointment of the Court of Chancery.
- (7.) *Ad litem*.
- (8.) By custom (1) belonging, in case of copyholds, to the next of blood or the lord; (2) by the custom of the City of London to the Lord Mayor and Aldermen in case of the children of freemen.

What are the rights and duties of the guardian ?

(1) He is entitled to the custody of the person of his ward; (2) he has an actual estate in his lands for the purposes of letting, bringing actions, &c.; (3) he must maintain the ward, and (4) when the ward comes of full age he must render him a full account, and is liable for all losses by wilful default or negligence.

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BOOK IV.

PUBLIC RIGHTS.

PART I.—CIVIL GOVERNMENT.

CHAPTER I.

THE PARLIAMENTS.

What are the relations of persons ?

(1) Public; (2) private. The public relations are those of the magistrates and the people.

Of what classes are the magistrates ?

(1) Supreme; (2) subordinate ; and of supreme magistrates in England the Parliament is the supreme Legislative, and the sovereign the supreme Executive.

How long have Parliaments existed ?

Parliaments in some shape are of as high antiquity as the Saxon government in this island, and have subsisted in their present form at least six hundred years.

How is Parliament assembled, and how often ?

By the sovereign's writs issuing out of Chancery by the advice of the Privy Council, and it assembles within thirty-five days of the issuing such writs. Formerly its sitting must not have been intermitted above three years, but now it sits every year.

What are the constituent parts of the Parliament?

(1) The sovereign sitting in his royal political capacity; (2) the lords spiritual and temporal, and (3) the commons represented by the members. Each of which part has a negative or necessary voice in making laws.

Of whom do the lords spiritual consist?

Two archbishops, and twenty-four bishops for England and Wales, and though the lords spiritual are a distinct estate from the lords temporal, they are usually included under the one name, "the Lords." They intermix in the votes, and a majority so obtained decides the specific question before the House.

Of what do the lords temporal consist?

Of the peers of the realm by whatever title of nobility distinguished. Dukes, marquises, earls, viscounts, or barons. Some sit by descent, some by creation, and others by election, as the sixteen Scottish peers elected for one parliament only, and the twenty-eight representative Irish peers who are elected for life. The number of peers in the United Kingdom is indefinite, and may be increased at will by the power of the Crown.

Of what do the commonalty consist?

The commonalty are divided into two classes; (1) those which have, and (2) those which have not the elective franchise. The counties are represented in the House of Commons by Knights (called Knights of the Shire), and the cities and boroughs by Burgesses. The university members, *i.e.* for Oxford, Cambridge, and London, are returned by the undergraduates, and the universities of Scotland and Dublin are also duly represented.

With regard to the general Law of Parliament, what are its powers and privileges?

Its power is absolute. Each House is the judge of its own privileges, and all the members of either House are entitled to the privilege (1) of speech, (2) of person; and it must be remembered that no one can sit in either House under twenty-one, and until he has in the presence of the members taken the necessary oath, and

an alien, although naturalized or made a denizen, cannot serve unless he is born of English parents, and also the members have the right to publish their own reports, papers, votes, and other proceedings.

How far is the person of a peer or a member of the House of Commons protected from arrest?

In the case of a peer his person is inviolable; in the case of a commoner when the House is sitting, and for forty days after every prorogation, and for forty days before the next appointed meeting, which is now in effect as long as parliament subsists; and he is also protected before the first meeting and after the final dissolution for a convenient time sufficient to allow of his coming from or returning to any part of the kingdom.

What are the peculiar privileges of the Lords?

- (1.) To hunt in the king's forests.
- (2.) To be attended by the judges and certain counsel.
- (3.) To make proxies.
- (4.) To enter protests, and
- (5.) To regulate the election of the sixteen peers of North Britain. The election of Irish peers being provided for by the fourth article of the Union.

What are the peculiar privileges of the Commons?

- (1) To raise taxes on the subject; (2) to determine the merits of their own elections with regard to the qualifications of the electors and elected, and the proceedings at elections themselves.

In respect of what species of property are electors entitled to a vote for a county?

Freeholds, copyholds, and leaseholds. A mortgagee if in possession of the receipts and profits (otherwise the mortgagor) and a *cestui que trust* have votes in respect of their several interests.

What is the necessary monetary qualification of a voter for the county?

- (i.) As to freeholds:
 - (1.) 40s. freeholds of inheritance.
 - (2.) 40s. freeholds for life or lives if the owner is in *bonâ*

fide occupation, or have been acquired by marriage, by marriage settlement, devise, or promotion.

(3.) Freeholders under £5 if not in occupation or obtained as above.

(ii.) As to copyholds or any other tenure not being freehold:

An estate for life or lives of the clear annual value of £5.

(iii.) As to leaseholds:

Lessees and the assignees for (1) an original term of sixty years of £5 clear annual value; (2) for an original term of twenty years £50 clear annual value; (3) sublessees of the occupiers in respect of an original term of twenty years.

(iv.) Franchise by occupation:

As to tenants.

(1.) Tenants a clear annual value of £50.

(2.) Owner, or tenant, or occupier a rateable value of £12 per annum.

How is the registration of voters conducted?

The overseers make out their lists before the 20th June, and call upon persons wishing to be placed thereon, or where any alteration is necessary to be made, to send in the fresh or altered claims to such overseers before the 20th July. The overseers also make out a list of persons entitled to a vote in the county. These lists and the register of the preceding year, together with notice of objections, are then gone through, and settled by the revising barrister, subject to an appeal in any particular case to the Court of Common Pleas, and the clerk of the peace has the register reprinted, and then handed to the sheriff. Freeholders, copyholders, customary tenants, must have been in possession of the property six calendar months before the 30th July previous to the holding of the revising barrister's court, and in case of leaseholders, assignees, or occupiers for twelve calendar months, subject to the fact of such properties having come to the owner, holder, or occupier liable to pay rent by descent, succession, marriage, marriage settlement, devise or promotion to any benefice or office, and in the case of a £12 per annum rateable owner or occupier if he has been duly rated and paid all his rates up to the 5th of January preceding.

What are the necessary qualifications for borough voters ?

- (1.) The occupation of a house or warehouse within the borough as sole owner or tenant, and having been for twelve months previous duly rated, and paid all rates due on the 5th of January preceding the 20th of July in the same year.
- (2.) In case of a lodger occupation as sole tenant for the twelve months preceding the last day of July, the same lodging being part of one and the same dwelling house, and of a clear value of £10 or upwards.

In the case of registration no person is entitled to vote unless his qualification as to residence continues to the polling, and parties claiming a vote need not send in a claim except in the case of a lodger, because their names are always entered.

Mention some of the restrictions and incapacities as regards voting.

- (1.) Full age and legal capacity.
- (2.) An estate must not be conveyed simply to confer a vote.
- (3.) Only one person can vote in respect of the same house or tenement.
- (4.) No peer can vote.
- (5.) No metropolitan police magistrate within his district.
- (6.) No voter must have received parochial relief within twelve calendar months preceding the last day of July in the same year.
- (7.) No person can vote at a county election in respect of property conferring a borough vote.

Mention some of the disqualifications for sitting in the House of Commons.

- (i.) Personal; (1) an English peer; (2) an infant; (3) lunatic; (4) idiot; (5) a person convicted of treason or felony; (6) an outlaw on a criminal prosecution; (7) a candidate consenting to or convicted of bribery is disqualified for seven years; (8) a bankrupt.
- (ii.) On account of offices; (1) judges of the Supreme Courts or County Courts of England; (2) Ireland; (3) Scotland; (4) officers of the Bankruptcy Courts; (5) the clergy;

(6) Metropolitan police magistrates; (7) sheriffs of counties; (8) returning officers of boroughs; (9) recorders; (10) revising barristers; (11) any person holding an office under the Crown since 1705; (12) a government contractor.

How are persons now elected to be members of the House of Commons?

Immediately Parliament assembles the Lord Chancellor sends his warrant to the Clerk of the Crown, who issues out writs to the returning officers, the sheriff of a county and the mayor of a borough, for the elections. Within two days after he receives the writ the sheriff, and within one day the mayor, must between 9 a.m. and 4 p.m. give public notice of the day and place of election, or of the poll if contested, and the time and place of nomination papers. The election must take place within the ninth and fourth days respectively; if necessary, the writ between the hours of 10 and 3. The candidate is then nominated in writing by two electors and eight others assenting, and if no more candidates are nominated within an hour there is no contest, otherwise a poll must be taken at a future date, which is now done by ballot, and the member returned by the majority, and the return made to the Clerk of the Crown. In case of equality of votes the returning officer gives the casting vote. In an election at the universities of Oxford, Cambridge, and London, the election is carried on by means of voting papers signed and delivered to the Vice Chancellor or his deputy at one of the appointed polling places, and the election does not continue for more than five days.

How is an election petition conducted?

An elector or candidate, within twenty-one days of the return, or twenty-eight days of any corrupt payment, presents a petition to the Court of Common Pleas which is served by the petitioner on the returned candidate. The petitioner must give security for costs to the amount of £1000. The trial then takes place before a judge without a jury in the particular borough or county. Evidence is taken on oath, and the judge decides the question and certifies the same to the Speaker—such decision is generally final.

How are laws enacted and passed ?

Each House has a Speaker. In the Lords he is the Lord Chancellor; in the Commons chosen by the House and approved by the sovereign.

The Speaker in the House of Commons never votes except to give a casting vote; in the Lords he does, but he must not give a casting vote, for in the Lords a case of an equality *semper præsumitur pro negante*.

The mode of passing bills is much the same in both Houses. The bill is brought in by a member upon motion made to the House for leave. It is read a first time and printed; it is then read a second time, upon which the provisions are openly discussed, and the question put and ascertained as to whether the bill should proceed further. Then it is *committed*, that is, referred to a select committee of the House if it contains matters of a private nature, or a committee of the whole House if of a public character. After it has passed through committee the chairman reports it to the House with amendments, and it is then reprinted and read a third time. The Speaker then puts the question whether it shall pass, and if agreed to the title is settled; it is then printed fair by the Queen's printers and carried to the Lords for their concurrence, when it is either agreed to, rejected or amended; if amended, the amendments are sent down with the bill to receive the consent of the Commons. If the amendments are disagreed to, a deputation from each House meets, and settles them. If neither House gives way the bill is lost; if the bill is agreed to, it remains with the Lords, and the next step is to obtain the royal assent.

How is the royal assent given ?

(1) In person, or (2) by commission, for by 33 Hen. VIII. c. 21, the sovereign may give his assent by letters patent under his great seal signed by his hand, and notified in his absence to both Houses assembled in the Upper House.

How may parliament be adjourned, prorogued or dissolved ?

- (i.) The Houses may adjourn themselves.
- (ii.) The royal authority alone can prorogue the Parliament.
- (iii.) Parliament may be dissolved:—

(1.) At the sovereign's will expressed in person or proclamation.

(2.) By efflux of time, which under the Settlement Act, 1 Geo. I. stat. 2, c. 38, is the space of seven years.

Formerly, Parliament used to be dissolved by demise of the Crown, that is, within six months after, but this is amended by 30 & 31 Vict. c. 102, which enacts that the demise of the Crown shall not dissolve it, but it shall continue as long as it would have continued, unless sooner dissolved or prorogued by the Crown.

CHAPTER II.

THE SOVEREIGN.

In whom is the supreme executive power of this kingdom lodged?

In a single person, the king or queen.

How may this royal person be considered?

With regard to (1) his relation with his people; (2) his title; (3) his royal family; (4) his councils; (5) his prerogative; (6) his revenue; (7) his forces.

What are the duties of the sovereign?

(1.) To govern the people according to law.

(2.) To execute judgment in mercy.

(3.) To maintain the established religion.

These are the sovereign's part of the original contract between the Crown and the people founded on the nature of society, and expressed in the coronation oath.

What are the duties of the sovereign's subjects?

Allegiance, being the people's reciprocal tie with the sovereign in return for the protection he affords them; in natural-born subjects the duty of allegiance is perpetual, and in aliens it is local and temporary.

How may the rights of aliens be enlarged ?

- (1.) By being made denizens, or
- (2.) Naturalized.

Who are natural-born subjects ?

Such as are born within the United Kingdom or the Colonies, and even children born abroad if of a natural-born father or grandfather on the father's side.

What was, and what is, the position of an alien friend in this country ?

Formerly he could not inherit any estate in this country, neither had he any inheritable blood, but he could only take a lease of a house, &c., for the residence or occupation of himself or his tenants for a period not exceeding twenty-one years. But by 33 Vict. c. 14, he can, after the date of the Act, 12th May, 1870, purchase and hold lands in this country, and a title to real property can be derived through or from him in the same manner as if he had been a natural-born British subject, but he cannot qualify for a franchise, hold property out of the United Kingdom, or be the owner of a British ship.

What is a denizen ?

An alien born who has obtained *ex donatione regis* letters patent to make him an English subject.

He could always have taken lands by purchase or devise, but not by descent, neither can he even now be a member of the Privy Council or of Parliament, or hold any office of trust or a grant of lands from the Crown, and letters of denization are not affected by 33 Vict. c. 14.

What is the position of aliens naturalized, and how can naturalization be effected ?

Naturalization may be effected by (1) Act of Parliament, and (2) by the Secretary of State's certificate.

By the former the alien is put into the same position as if he had been naturally born. Naturalization by Act of Parliament is also retroactive, wherein it differs from denization; and if naturalized by the latter method, under the Acts of 1870 and 1872 in the

case of an alien resident in this country for a period of five years, upon taking the oath of allegiance the alien is entitled to all political and other rights, and subject to all the obligations of a British subject of the United Kingdom.

What is the title to the crown?

By the positive constitution of the Kingdom it has ever been descendible, and so continues in a course peculiar to itself, but subject nevertheless to limitation by Parliament, and notwithstanding such limitations the Crown retains its descendible qualities and becomes hereditary in the prince to whom it is limited.

Point out any particulars in which the descent of the crown differs from that of landed estates.

- (1.) Among females the eldest and her issue only inherit.
- (2.) The Crown goes to the collateral relations of the late sovereign, provided they are lineally descended from the blood royal, and herein there was no objection to half blood as in case of Mary, Edward VI., and Elizabeth.

State, as briefly as possible, the descent of the crown from Egbert to Victoria.

King Egbert came to the throne of the West Saxons by an undisturbed descent from his ancestors for more than three hundred years. From his death to that of Edmund Ironside, for more than two hundred years the Crown descended regularly through a succession of fifteen princes of the same royal family without irregularity, save the illegitimacy of Edmund Ironside and Athelstan, each taking the Crown away from a legitimate brother.

Edmund Ironside was compelled to divide his kingdom with Canute, who, after the former's death, seized the whole of it. Hence the introduction of a new race in the person of the Danish kings Canute, Harold the First, and Hardicanute, when the Saxon line was again restored in the person of Edward the Confessor, son of Ethelred, then came Harold the Second, Edward the Confessor dying without issue. Then the Norman invasion; William the Conqueror succeeding by force, thus transferring the Crown of England into a new family, and all its inherent properties.

The crown then descended to his sons William Rufus and

Henry I. respectively, Stephen of Blois, William's grandson, usurping the crown which by right belonged to the Empress **Matilda**, daughter of Henry I. Stephen was succeeded by Henry II. heir of William the Conqueror, lineally descended from Edmund Ironside, last of the Saxon race. Then came Richard I. who died childless, and the right vested in his nephew Arthur, but John, the youngest son of Henry II., seized the throne, claiming the crown by hereditary right. Thence the crown descended to Henry III., son of John, and from him to Richard II., a succession of six generations by hereditary right. Upon Richard II.'s abdication, he having no issue, the right resulted to the issue of Edward III., his grandfather; Henry IV. next succeeded by usurpation, though he had to claim it as a succession, and the crown was resettled by 7 Hen. IV. c. 2. Thence the crown descended to his son and grandson, Henry V. and Henry VI., in the latter of whose reign the House of York asserted their title, and the crown was ultimately, after seven years' bloodshed, established in the person of Edward IV. Edward IV. left two sons and a daughter, the eldest of which sons, Edward V., was deposed by Richard III., whose tyranny gave opportunity to Henry, Earl of Richmond, to assert the title to the crown, and on Bosworth Field he was crowned Henry VII., and then married Elizabeth of York, the undoubted heiress of the Conqueror. Then succeeded Henry VIII. by hereditary right, and the crown was transmitted successively to Edward VI., Mary, and Elizabeth, by Stat. 35 Hen. VIII. c. 1. Elizabeth dying unmarried, the line of Henry VIII. became extinct. Consequently the other issue of Henry VII. by Elizabeth of York must be referred to, whose eldest daughter, Margaret, married James IV. of Scotland. King James VI. of Scotland, and First of England, was undisputably heir of the Conqueror and of the Saxon monarchs. Then succeeded his son Charles I., and after many years of misery the right heir to the crown was restored in the person of his son Charles II., in the end of whose reign the Bill of Exclusion was introduced to set aside his brother, the Duke of York, on the ground of his being a Papist, but the bill was rejected and the Duke of York succeeded as James II., until the revolution in favour of William and Mary, 1688, and his consequent abdication, which ended the old line of succession lasting six hundred years since the Conquest, and from king Egbert almost nine hundred years.

It was then decided by Parliament that there was a vacancy of the throne, which was duly declared February 12th, 1688, and the crown settled upon William and Mary, Prince and Princess of Orange; after their decease to the heirs of the body of the said princess, and in default of such issue to the Princess Anne of Denmark and the heirs of her body, and in default of such issue to the heirs of the body of the said Prince of Orange. These three sovereigns took the crown by way of donation and not by descent.

Towards the close of William's reign, on the death of the Duke of Gloucester, the last surviving child of the Princess Anne, the King and Parliament again limited the succession, when in conformity with 1 W. & M. sess. 2, c. 2, as to the exclusion of Papists, they were compelled to turn their attention to the Electress Sophia, Electress and Dowager Duchess of Hanover, and on her and her issue the crown was settled by Statute 12 & 13 Will. III., c. 2, but she dying before Queen Anne the inheritance thus limited descended on her son and heir, George I.; from him it descended to George II., and from him to his grandson and heir, George III.; from George III. to George IV., who dying without issue was succeeded by William IV., third son of George III., his second son, Frederick Augustus, Duke of York, having previously died without lawful issue; on the death of William IV. the crown descended to the only child of Edward, Duke of Kent, fourth son of George III., our present sovereign Queen Victoria.

What may be collected from the last answer ?

- (1.) That the crown is not absolutely hereditary.
- (2.) That the common stock is subject to variation, as in the cases of Egbert, William the Conqueror, and the Princess Sophia.
- (3.) Formerly the descent was absolute; now, by means of the new settlement it is conditional, as it is limited to such heirs only of the body of the Princess Sophia as are Protestants, and are married to Protestants.

CHAPTER III.

THE ROYAL FAMILY.

Assuming a female to sit on the throne, how would she be styled ?

(1) Queen regnant, or sovereign with all the powers, &c. of a sovereign; (2) Queen Consort (the wife of the reigning monarch) enjoying peculiar prerogatives, such as being able to purchase lands, convey them, grant leases, &c., take a grant from the King, sue and be sued alone, have a separate property in goods as well as lands, and dispose of them by will; and is generally looked upon as a feme sole and not a feme covert; and (3) a Queen Dowager, who is the widow of the King, enjoying most of the privileges of a Queen Consort, and although the succession to the crown is not endangered in her person, no one can marry her without licence from the crown on pain of forfeiture.

What do you know of the title and estate of the Prince of Wales ?

He is heir apparent to the crown, and he, his royal consort, and the princess royal his sister, are people peculiarly regarded by statute. He is usually made Earl of Chester by letters patent, and he is by inheritance Duke of Cornwall.

Specify the councils of the sovereign.

(1) The Parliament; (2) the peers, who are hereditary councillors of the crown by birth; (3) the judges, councillors in matters of law; (4) the Privy Council, which is the principal council.

Of how many members of the privy council does the cabinet consist, and explain their duties ?

It consists of fifteen members when all the appointments are filled, each of its members consisting of one of the principal officers of State, called together for the government of the country, and in times of general exigency, their acts being subject to the sovereign's approval. Amongst its ordinary members we find (1) the First Lord of the Treasury; (2) the Lord Chancellor; (3) the Chancellor of the Exchequer; (4) the Lord President of the Council;

(5) the Lord Privy Seal; (6) the First Lord of the Admiralty; and the five principal Secretaries of State.

How are privy councillors appointed, and what are their duties?

They are appointed at the nomination merely of the sovereign, and take the necessary oaths; they are appointed for the life of the sovereign, but are subject to removal at pleasure. The members have also to inquire into offences against the government, and commit the offenders for trial, and in certain cases the judicial powers of a court of justice, viz. (1) in colonial causes; (2) appeals from the Ecclesiastical or Maritime Courts; (3) in cases of patents and inventions, for a prolongation; and (4) in copyright cases, which duties are exercised by the Judicial Committee of the Privy Council.

Specify the members of the judicial committee.

(1) The Lord Chancellor; (2) the Lords Justices of Appeal; (3) other members of the Privy Council who have held offices as enumerated in the Acts or shall be appointed by the Crown; and (4) by 34 & 35 Vict. c. 91, her Majesty has power to appoint four additional judges, each of whom has been a judge of the superior courts at Westminster, or of Bengal, Madras, or Bombay.

How can the privy council be dissolved?

(1.) At the sovereign's pleasure.

(2.) By the sovereign's demise.

But by 6 Anne, c. 7, the Privy Council continues for six months after the demise of the sovereign, unless sooner determined by the successor.

CHAPTER IV.

THE ROYAL PREROGATIVE.

What is meant by the word prerogative?

That special power and pre-eminence which the sovereign has above all other persons, and out of the ordinary course of law in right of his regal dignity.

Mention the principal statutes by which our liberties have been asserted.

- (1.) The great charter of King John.
- (2.) The *Confirmatio Chartarum* (25 Edward I.).
- (3.) The Petition of Rights (3 Car. I.).
- (4.) The Habeas Corpus Act.
- (5.) The Bill of Rights (1 W. & M., St. 2, c. 2); and
- (6.) The Act of Settlements, 12 & 13 Will. III.

What are the two kinds of prerogatives?

- (i.) Direct, which may be either (1) as regards the royal character; (2) authority; (3) income; (ii.) By way of exception.

What are the attributes of direct prerogatives in regard to the royal character?

- (1.) Of sovereignty or pre-eminence.
- (2.) The king can do no wrong.

What consists in prerogative?

The executive power of government.

In foreign concerns what prerogative has the sovereign?

As representative of the nation:—

- (1.) Of sending and receiving ambassadors.
- (2.) Of making treaties and alliances with foreign states and princes.
- (3.) Of proclaiming war or peace.

- (4.) Of issuing letters of *marque* and reprisals upon due demand.
- (5.) Of granting safe conducts.

In domestic affairs what is the character of the sovereign ?

- (i.) As a constituent part of the supreme legislative power he can reject such Parliamentary provisions as he considers inexpedient.
- (ii.) As the first in military command in the kingdom he can (1) raise and regulate fleets and armies; (2) build forts; (3) appoint ports and havens; (4) erect beacons, lighthouses, and sea marks (a power now vested in the Trinity House); (5) forbid the importation and exportation of military stores and arms; and (6) confine his subjects within the realm or recall them from foreign parts.
- (iii.) As the Fountain of Justice and general Conservator of peace of the Kingdom, he may consequently (1) prosecute offenders; (2) pardon crimes; (3) issue proclamations.
- (iv.) As *parens patriæ* he is invested originally with the care of infants, idiots, and lunatics, which he subsequently delegated to his Lord Chancellor as Keeper of his Conscience.
- (v.) As the Fountain of Honour, office, and privilege he has (1) the sole power of conferring dignities and honours; (2) the erecting and disposing of offices; (3) of conferring privileges upon private persons.
- (vi.) As the arbiter of domestic commerce he is entitled to (1) the erection of public marts; (2) the regulation of weights and measures; (3) the coinage or the legitimation of money; and
- (vii.) As the Supreme Head of the Church, the sovereign (1) regulates and dissolves synods; (2) nominates bishops; and (3) receives appeals in all ecclesiastical causes which were brought before the Crown in council, and heard before the judicial committee, or now may be heard before the Court of Appeal under the Judicature Act.

CHAPTER V.

THE ROYAL REVENUE.

Of what different kinds is the sovereign's revenue?

It is either (i.) ordinary, or (ii.) extraordinary; and the ordinary is (1) ecclesiastical, and (2) temporal.

What does the sovereign's ecclesiastical revenue consist of?

- (1.) The custody of temporalities of vacant bishoprics.
- (2.) The first fruits and tenths of benefices.

What does the sovereign's ordinary temporal revenue consist of?

- (1.) The rents and profits of the demesne lands of the Crown.
- (2.) The hereditary excise, being part of the consideration for the purchase of the sovereign's feudal profits, and the prerogatives of purveyance and pre-emption.
- (3.) An excise duty on all beer and ale and other liquors sold in the kingdom, being the residue of the same consideration.
- (4.) The profits arising from forests.
- (5.) From the Courts of Justice.
- (6.) The Royal Fish, wrecks, treasure trove, waifs and estrays, including in the word wreck under certain circumstances *jetsam*, *flotsam* and *ligan*.
- (7.) The royal mines.
- (8 and 9.) Profits arising from escheats, and the custody of idiots.

What did the sovereign's extraordinary revenue formerly consist of?

(1) Aids; (2) subsidies, and (3) supplies, now arrived at by taxation, and granted by the Commons in Parliament.

What are the taxes now imposed by law?

- (i.) The land tax in the place of the subsidies on persons in respect of property by tenths or fifteenths. It is raised

by charging a particular sum upon each county in pursuance of the valuation of 1692, which sum is again assessed and raised upon individuals by Commissioners; it is perpetual and liable to redemption.

- (ii.) The customs, or the tonnage, or poundage of all merchandise exported or imported. The duties on exports were said to arise because the sovereign (1) gave the subject leave to go out of the country and take his goods, and (2) because he had to keep up the ports, &c., and protect the merchant from pirates.
- (iii.) The excise duty or inland imposition on a great variety of commodities.
- (iv.) The post office or duty for carriage of letters.
- (v.) The stamp duty on paper and parchment, documents, &c.
- (vi.) The duties upon offices and pensions.

It must be remembered that all the above are permanent taxes.

What is the Income Tax ?

It is a tax arising from yearly profits, arising from property, professions, trades, and offices.

It was reimposed by Sir Robert Peel in 1842 for three years, and has been continued (varying in amount) by numerous statutes, of which the last is 31 & 32 Vict. cc. 2 & 28.

For what purpose is this revenue applied ?

Part of it is applied to pay the interest of the national debt till the principal is discharged by Parliament, which consists of a debt in part funded, and in part unfunded, the former secured on the public funds, and the latter on exchequer bills and bonds.

What were the produce of these several taxes ?

Originally separate and specific funds to answer specific loans upon their respective credits which were formerly consolidated by Parliament into three principal funds; (1) the aggregate; (2) the general; and (3) the South Sea Funds; and these funds were again in 1787 all included in one called the Consolidated Funds, since combined with that of Ireland, forming the Consolidated Fund of the United Kingdom.

What becomes of any surplus of the Fund?

After paying the interest on the national debt it is carried to the credit of the Commissioners for the reduction of the national debt; and unless otherwise appropriated by Parliament, is annually to be applied towards that object, assuming it be not required to make up any deficiencies in the civil list, which is the immediate and proper revenue of the Crown, settled by Parliament on the sovereign's accession, for defraying the charges of civil government.

CHAPTER VI.

THE ROYAL FORCES.

Of what does the military state consist?

- (1.) Of the militia of each county raised by voluntary enlistment for a period not exceeding six years, and officered by gentlemen commissioned by the Crown.
- (2.) The Yeomanry cavalry, and the Volunteer rifles, and Artillery Corps; and
- (3.) The disciplined regular troops of the Kingdom kept on foot from year to year by Parliament, and governed by martial law or arbitrary articles of war formed at the pleasure of the Crown.

What does the maritime state consist of?

The officers, seamen, and marines of the British Navy, who are by express and permanent laws established by Act of Parliament, the last of which is 29 & 30 Vict. c. 109.

CHAPTER VII.

THE NOBILITY AND OTHER RANKS.

How may the civic state be divided?

Into (1) the nobility; (2) the commonalty.

Who are included under the nobility, and how are the titles created?

(1) Dukes; (2) marquesses; (3) earls; (4) viscounts; (5) barons. They are created either by writ, that is, by summons to Parliament, or by letters patent from the sovereign, that is by royal grant, and they enjoy many privileges exclusive of the senatorial capacity.

Into what degrees are the commonalty divided?

(1) Knights of the Garter; (2) Knights Banneret; (3) Baronets; (4) Knights of the Bath; (5) Knights Bachelors; (6) esquires; (7) gentlemen; (8) tradesmen, artificers, and labourers.

CHAPTER VIII.

MAGISTRATES, &c.

Who are the subordinate magistrates of the most general use and authority?

(1) Sheriffs; (2) coroners; (3) justices of the peace; (4) constables.

Describe the office of sheriff.

He is the keeper of each county, appointed by the sovereign in due form with certain judicial powers; he is also conservator of the sovereign's peace, a ministerial officer, and the bailiff of the Crown.

Describe the office of coroner, and what are their duties.

They are permanent officers of the Crown in each county, elected by the freeholders—and by 7 & 8 Vict. c. 92, they may be appointed for districts within counties—whose office it is to make enquiry concerning the death of the king's subjects, *super visum corporis*, and certain revenues of the Crown, and also in particular cases to supply the office of sheriff.

Describe the office of justice of the peace and its duties.

Justices of the peace are officers appointed by the Crown to administer justice within the realm, usually selected on the recommendation of the Lord Lieutenant of the county, and appointed by special commission under the Great Seal jointly and severally to keep the peace in particular, and any two or more of them to inquire of and determine felonies and other misdemeanours. They act gratuitously, receiving no salary or fees.

Mention briefly the duties of the justice.

- (1.) To conserve the peace.
- (2.) Any two of them have power to determine felonies and other offences within their jurisdiction at Quarter Sessions.
- (3.) Licensing alehouses or appointing overseers of the poor or surveyors of the highway at special sessions.
- (4.) Trying in a summary way at petty sessions, offences within their jurisdiction by particular statutes.

What is the office and duty of a constable ?

They are of two sorts; (1) high constables; (2) petty constables. The former are appointed at courts leet, or by Justices at special sessions, under 7 & 8 Vict. c. 37, s. 8. Their general duties are to keep the Queen's peace within the hundred, and that of the petty constables within the parish or township, and the latter have also to serve summonses and execute warrants, &c., but the duties have been considerably altered by modern statutes constituting a public force or county constabulary.

PART II.

CHAPTER I.

THE ECCLESIASTICAL AUTHORITIES.

What do the clergy consist of?

All persons in Holy Orders or ecclesiastical offices, and as thus defined consist of (1) archbishops and bishops; (2) deans and chapters; (3) archdeacons; (4) rural deans; (5) parsons and vicars, to whom there are requisite Holy Orders, presentations, institution and induction; (6) curates.

What are the inferior officers connected with the Church?

(1) Churchwardens; (2) parish clerks and sextons.

CHAPTER II.

ENDOWMENTS AND PROVISIONS OF THE CHURCH.

What are the endowments of the Church?

Lands, advowsons, and tithes.

What is the subject of property of a clergyman in a church endowment?

(1) The seisin for life of the rectory or vicarage-house, the church, and the glebe; (2) in rectories, the chancel and churchyard, and in vicarages the churchyard only.

What is an advowson, and how are they divided?

A perpetual right of presentation to an ecclesiastical benefice; they are either (i.) appendant, *i.e.* when annexed to a manor, or (ii.) in gross, *i.e.* existing separate and apart from the property of the manor.

What is lapse ?

A forfeiture of the right of presentation to a vacant church by neglect of the patron to present within six calendar months.

What is simony ?

It is the corrupt presentation of any one to any ecclesiastical benefice whereby that turn becomes forfeited to the Crown.

State shortly what is simony.

- (1.) A purchase of an advowson (whether full or empty) if connected with a corrupt contract as to the next presentation.
- (2.) The purchase of a next presentation, the living being actually empty.
- (3.) The purchase by a clerk either in his own name or another's of the next presentation assuming him to be presented to it at any future time.
- (4.) A bargain by any other person for the next presentation, with the privity, and with the view to the nomination of the particular clerk afterwards presented.

It must be remembered that in case of a simoniacal contract, unless the clerk is a guilty party, only the patron suffers and not the clerk.

In favour of whom are covenants to resign a living legal ?

By 9 Geo. IV. c. 94, in favour of any one person named, even though a stranger ; but if the bond be taken in favour of one of two, then each of them must be by blood or marriage an uncle, son, grandson, brother, nephew or grandnephew of the patron or one of the patrons beneficially entitled.

What are tithes, and how are they divided ?

Incorporeal hereditaments in gross, consisting of (1) the tenth of the yearly produce, *i.e.* predial, as corn, &c.; (2) the stock of the land, *i.e.* mixed, as wool, &c., and (3) the personal industry of the inhabitants. Now by the Tithe Commutation Acts a rentcharge has been substituted in lieu of tithes, the amount of which is annually adjusted by a Board of Commissioners according to the average price of corn.

PART III.

SOCIAL ECONOMY.



CHAPTER I.

CORPORATIONS.

What are bodies politic or corporations ?

Artificial persons established for preserving in perpetual succession certain rights, which being conferred on natural persons only would fail in process of time.

How are corporations divided ?

- (1.) Aggregate, consisting of many members, such as a mayor and commonalty.
- (2.) Sole, consisting of one person only, as a bishop.
Each of the above are again subdivided into—
- (3.) Ecclesiastical, erected to perpetuate the rights of the Church, and
- (4.) Lay.

How are lay corporations subdivided ?

Into (1) civil, erected for temporal purposes, and (2) eleemosynary, erected to perpetuate the charity of the founder.

How are corporations usually erected ?

By consent of the Crown, express or implied, the former being given by Act of Parliament or royal charter.

What are the powers incident to all corporations ?

- (1.) To sue and be sued, grant and receive as a private individual.

- (2.) Amenable in respect of its corporate property to judgments.
- (3.) To act under its common seal.
- (4.) To make, alter, and repeal bye-laws.

What are joint stock companies ?

Qualified corporations created by the act of the members, and regulated by the Companies Acts, 1862 and 1867, by the former of which statutes it is provided that any number of persons not less than seven associated for a lawful purpose may subscribe their names to a memorandum of association, &c., and form an incorporated company with or without limited liability. And no company consisting of more than twenty persons shall be formed for carrying on any business that has gain for its object without being registered.

Under what circumstances are past and present members of a company liable for its debts in the event of its being wound up ?

The present and past members become liable to contribute, when the company is not limited, to an amount sufficient to pay the debts and liabilities, and also the costs of winding up and adjusting the rights of the contributories amongst themselves, with the following qualifications, that a past member who ceased to be a member within a year before the commencement of the winding up cannot be placed on the list of contributories, until it is proved first, that there was at the date of the winding up order some existing debt or liability of the company contracted before he ceased to be a member; and secondly, in the case of a limited company, that the shares formerly held by him have not been fully paid up.

State concisely the steps to be taken to obtain an order for the compulsory winding up of a company.

The course of proceeding is by petition presented to the Court of Chancery by one or more of the creditors or contributories, or by three or any of them jointly.

The petition is verified by affidavit, and served on the company. The order being obtained, the Court appoints the official liquidator. The list of contributories is then sent in and settled. The claims

advertised for are sent in and adjudicated, and the assets of the company realized and distributed, and an order made for dissolution. The company itself may also pass a resolution to wind up voluntarily.

What is the duty of corporations, and how is it enforced?

Their duty is to answer the ends of their institution, and to enforce this duty. All corporations may be visited. Spiritual corporations, by the ordinary; lay corporations by the founder or his representatives, viz. the civil by the king, represented in his Court of King's Bench; the eleemosynary by the endower or by his heirs or assigns.

How may corporations be dissolved?

- (1.) By the natural death of all their members.
- (2.) By surrender of their franchises.
- (3.) By forfeiture of the charter.

What is a municipal corporation?

It is a body corporate, and consists of a mayor, aldermen, and burgesses, established for the government of towns, the preservation of order and the liberties of the inhabitants.

CHAPTER II.

THE LAWS RELATING TO THE POOR.

State briefly the principal provisions of the various statutes relative to the poor.

- (1.) By 4 & 5 Will. IV. c. 76, "the Poor Law Amendment Act of 1834." An Act passed for the general relief of the poor by means of the introduction of "Poor Law Commissioners."
- (2.) Superseded by 10 & 11 Vict. c. 109, in 1847, and a Board established known as the "Poor Law Board," to which

the duties of the Poor Law Commissioners were assigned.

- (3.) 34 & 35 Vict. c. 70, establishing in 1870 a "Local Government Board," to which the duties of the Poor Law Board, have been transferred, and provides for the relief of the poor by a board of guardians, duly elected, appoints inspectors, and provides for the consolidation of parishes into a single union, with a common workhouse and a common fund.

How can a settlement be obtained in a parish?

(1) By birth; (2) by parentage; (3) by marriage; (4) by renting a tenement coupled with a forty days' residence (the tenement must be of a £10 annual value) which must have been occupied, and rent and poor rate paid for the term of one year at least; (5) by being bound apprentice in the parish; (6) having sufficient estate in the parish, and (7) by payment of taxes.

Before the Act of 1834, a settlement might have been gained by the forty days' residence, coupled also with (1) hiring and service for a year, and (2) by serving an annual office.

BOOK V.

CHAPTER I.

CIVIL INJURIES.

What are wrongs, and what are the different kinds?

Wrongs are privation of rights, and are either (1) private or civil injuries, and (2) public or crimes.

What are private wrongs or civil injuries?

An infringement or privation of the civil rights of individuals considered as individuals, and consequently subject to redress; whereas crimes or public wrongs violate the rights of the public at large and require punishment.

How is the redress effected?

(1) By mere act of the parties; (2) by the mere operation of law; (3) by both together or suit in Court.

From whence does redress from the mere act of parties arise?

(1.) From the sole act of the party injured.

(2.) From the joint act of all the parties.

Mention some of the former class alluded to in the last question.

(1) Self-defence; (2) recaption or reprisal; (3) entry on lands and tenements; (4) abatement of nuisances; (5) distress for rent or *damage feasant*; (6) the seizing of heriots.

Define a nuisance.

Anything that unlawfully annoys or damages another, and in the case of a private nuisance, *i.e.* obstruction of an ancient light,

&c., it may be abated, *i.e.* removed without unnecessary damage or violence.

What is a distress, and in what cases is it usually made?

It is derived from the Latin word *Districtio*, and may be defined as the taking of the personal chattel out of the possession of wrongdoers into the custody of the party injured, to procure a satisfaction for the wrong committed. It is made (1) in cases of nonpayment of any kind of rent, assuming it is a rent certain, and (2) for cattle damage *feasant*.

What things are distrainable?

All personal chattels, with the exception of—

- (1.) Animals *feræ naturæ*, save deer kept for sale.
- (2.) Whatever is in the personal use of a man, as a horse on which a man is riding.
- (3.) Things delivered to a man to be carried, brought, or managed in the way of his trade, as cloth at a tailor's.
- (4.) Things in the custody of the law, such as property already taken damage *feasant*, or in execution.
- (5.) Loose money.
- (6.) Anything that cannot be returned in as good condition as when distrained, such as milk, fruit, &c.
- (7.) Fixtures.

Privileged *sub modo*.

- (8.) Beasts of the plough, sheep and instruments of husbandry.
- (9.) The instruments of a man's trade or profession.

Are the goods of a lodger distrainable for rent due to the superior landlord by his immediate tenant? What alteration in the law has recently been made?

They are distrainable; but by the 1st section of 34 & 35 Vict. c. 74, the lodger serves on the superior landlord a declaration in writing, that the immediate tenant has no right to the goods distrained, and also what rent he, the lodger, owes to his immediate landlord, which he must pay or tender to such landlord; whereupon further proceedings become illegal, and the goods recoverable by the lodger on the order of two justices or a stipendiary magistrate.

At what time can a distress be made, and how ?

It must be made in the day, *i.e.* between sunrise and sunset; it cannot be made in the night except for cattle damage *feasant*, because they might otherwise escape.

The distress is made by the landlord or his agent or bailiff either during the continuance of the tenancy or within six months of its determination, and seizing a portion of the goods in the name of the whole; the whole amount of the rent should be distrained for at once, unless there is not sufficient on the premises, or there is a mistake in value, and when the distress is taken the things must be impounded, and written notice of the cause of distress given to the tenants. It must be remembered that an outer door cannot be broken open to make a distress, but when the landlord is in the house an inner door may be broken open.

Assuming goods to have been fraudulently removed and locked up to prevent a distress, what happens ?

The landlord may within thirty days afterwards follow them, and by the assistance of the peace officer of the parish, (an oath having made been before a justice, in case it is a dwelling-house, of a reasonable ground to suspect that such goods are concealed therein,) break open in the daytime any place where they are found to be.

When the landlord distrains for rent, after what time and subject to what precautions can he proceed to sell ?

He cannot sell the goods until five days next after the distress is taken, and notice of the cause of the distress given, so as to give the tenant a chance to replevy before the sale. The goods must be appraised by two duly sworn appraisers. The landlord is not bound to sell on the expiration of the five days; he may wait a reasonable time.

If any irregularity occurs in making a distress, is the distrainor a trespasser ab initio ?

Not now by 11 Geo. II. c. 19, if any rent is justly due; he was formerly.

What do you understand by the term arbitration ?

Where the parties injuring and injured submit all matters in dispute concerning any personal chattels or personal wrong to the judgment of two or more arbitrators to decide, and if they cannot agree, then to an umpire; the decision, when arrived at, is called an award, which is in writing. The subject is mainly governed by 9 & 10 Will. III. c. 15, and 3 & 4 Will. IV. c. 42. The award is usually final, and no objection can be taken to it not apparent on the face of the award, otherwise application must be made to set the award aside before the last day of the term in which such award shall be published.

CHAPTER II.

REDRESS BY OPERATION OF LAW.

In what two various ways is redress effected by mere operation of law ?

- (1.) In the case of retainer, *i.e.* where a creditor is executor or administrator, and is thereupon allowed to retain his own debt before any other creditors of the same degree.
- (2.) Remitter, *i.e.* where one who has a good title to lands, &c., comes into possession by a bad one, and is thereupon remitted to his ancient good title, which protects his ill-acquired possession.

CHAPTER III.

THE COURTS IN GENERAL.

What is a court?

A place wherein justice is judicially administered by officers delegated by the Crown, being either of record or not of record, the former having its acts and judicial proceedings enrolled for a perpetual memorial, with power to fine and imprison for contempt.

Where not of record (being generally courts of inferior jurisdiction) they have not such powers.

What is incident to all courts?

(1) A plaintiff; (2) a defendant, and (3) a judge; and with us usually solicitors, advocates, or counsel, viz. either barristers or serjeants-at-law.

CHAPTER IV.

THE INFERIOR COURTS OF JUSTICE.

Mention the various inferior courts of justice.

(1) The Court Baron; (2) the Hundred Court; (3) the Sheriff's County Court; (4) the County Courts; (5) the several courts which exist within many of the cities, boroughs, and corporations throughout the kingdom, and held by prescription, charter, or Act of Parliament; (6) the Court of the Commissioners of Sewers; (7) the Court of the Stannaries of Cornwall and Devon; (8) the Courts of the two Universities of Oxford and Cambridge; (9) the Ecclesiastical Courts, viz. (a) the Archdeacon's Court; (b) the Consistory Court of the Bishops; (c) the Court of Peculiars, and (d) the Court of Arches.

What is a court baron ?

A court holden by the steward in every manor. It is of two natures, the customary court belonging to the copyholders, in which the estates are transferred, &c., and the other was a court of Common Law held before the freeholders of the manor, and having jurisdiction in any personal action of debt, case or the like when the debt or damage did not amount to 40s., as well as to determine controversies relating to the rights of lands within the manor.

Give some account of the County Courts.

The establishment of the County Courts took place on the judicial business of the old Sheriffs' County Court (which fell into disuse by reason of its dilatory and expensive proceedings) and that of the Courts of Request or Conscience being transferred to these new courts by 9 & 10 Vict. c. 95, and by subsequent statutes.

The Act of 1846 erected a certain number of county court districts in each county, in each of which districts a court is held once a month or otherwise as directed, and is constituted a Court of Record with a judge and registrar, and other necessary officers; and by 30 & 31 Vict. c. 142, the plaintiff enters his claim either (1) in the County Court of the district in which the defendant resides or carries on business at the time; (2) by leave of the judge or registrar, in which he has dwelt or carried on business for six months previous; or (3) by leave, where the cause of action in whole or part arose.

What is the limit of the jurisdiction of the County Court in matters of contracts, tort or title ?

In all actions of contracts where the amount sued for does not exceed £50, and in actions of torts, with the exception of breach of promise of marriage, libel, slander, seduction, or malicious prosecution, where the sum does not exceed £10.

In actions of ejectments when neither the value of the property nor the rent exceeds £20 per annum, and in actions to determine the title to hereditaments corporeal or incorporeal to the same amount.

Under what circumstances may a defendant in an action of tort who is sued in the Superior Court get the cause remitted to the County Court?

If the action be one of malicious prosecution, illegal arrest, or distress, assault, false imprisonment, libel, slander, seduction, or any other action of tort, the defendant may apply to make the plaintiff give security for costs, supporting his application by affidavit that the plaintiff has no visible means of payment of costs in the event of a verdict being found against him, and unless this be done within the time limited by the order the cause will be remitted accordingly.

What penalty is imposed when an action which ought to be brought in the County Court is brought in the Superior Court?

If on contract, and the plaintiff does not recover more than £20, or if on tort more than £10, the plaintiff will not get his costs unless the judge certifies that there was sufficient reason for so trying such action, or the judge at chambers allows the costs.

In what cases can actions of contracts which have been commenced in the Superior Court be remitted to the County Court?

In any action of contract where the amount in dispute does not exceed £50, the defendant may apply that the issue be tried in a County Court, the summons to be taken out within eight days of service of the writ, and an affidavit must be made showing a good defence.

How is a suit brought in a County Court?

The plaintiff enters a plaint, whereupon a summons is issued and served upon the defendant by the proper officer. Both parties must appear on the day named, and the judge tries the case summarily. Should the amount exceed £5 a jury may be summoned, or even where it does not exceed such sum, if the judge shall so think fit. Where the judgment is for payment of a sum of money, execution issues, and if the defendant has the means of payment and will not pay, he is liable to be imprisoned for six weeks on a judge's commitment summons.

Under what circumstances does an appeal lie from the judge's decision?

If either party is dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, assuming the subject-matter of the action to be above £20, but the appellant must give security for costs, and if the defendant, must include those of the judgment, and the parties must not in writing have declared that the judge's opinion is to be final.

State the equitable jurisdiction of the County Court.

In cases of—

- (1.) The administration of real or personal estate.
- (2.) Trusts.
- (3.) Foreclosure and redemption.
- (4.) Specific performance or the rectification of agreements for sales or leases.
- (5.) Proceedings under the Trustee Relief Acts.
- (6.) Maintenance or advancement of infants.
- (7.) Dissolution or winding up of partnerships.
- (8.) Injunctions in the above cases; assuming always that the amount involved in any of the foregoing matters does not exceed £500.

What are the several injuries which are cognizable in the Ecclesiastical Courts?

- (1.) Subtraction of letters; recoverable by distress.
- (2.) Nonpayment of ecclesiastical dues; remedy by decree for payment, and the Tithe Acts also apply.
- (3.) Spoliation; remedy by decree for restitution, and an account of profits.
- (4.) Dilapidations; remedy by action.

State briefly the method of proceeding before these tribunals.

By citation and libel, succeeded by defendant's answer and proofs. If the defendant has any defence, he sets it out in his defensive allegation, which entitles him to plaintiff's answer, and thence to proofs. The Court has the power to summon witnesses. The notes of the evidence are taken by the judge or a registrar, and

then the judge takes information by advocates, and thereupon forms his interlocutory decree or definite sentence, from which there lies an appeal in the several stages mentioned.

The Court has the power to pass sentence of deprivation or excommunication.

CHAPTER V.

THE SUPREME COURT OF JUDICATURE.

How is the Supreme Court of Judicature constituted ?

(1) By the High Court of Chancery ; (2) the Court of Queen's Bench ; (3) the Common Pleas ; (4) the Exchequer ; (5) the Admiralty Court ; and (6) the Court of Probate and Divorce.

Whence does the High Court of Chancery derive its name ?

The word "chancery" is derived from *cancellaria*, and the Lord Chancellor or judge from *cancellarius*, which is again derived from the word *cancello*, from his cancelling the King's letters patent when granted contrary to law, and the main duty of the Court was to administer *Equity* as contradistinguished from Law.

What are the duties of the Lord Chancellor ?

(1) He presides over the House of Lords ; (2) appoints all justices of the peace ; (3) Keeper of the King's conscience ; (4) visitor of all colleges and hospitals of the Sovereign's foundation ; (5) has the gift of all small livings of the Sovereign ; (6) general guardian of infants, idiots, lunatics ; and (7) has a general superintendence over all charitable foundations.

Give some history of the origin of the Court of Chancery.

The idea seems to have originated in the fourteenth century in connection with the doctrine of uses and trusts, and to have been first carried out by the invention of the writ of subpoena returnable only in the Court of Chancery, whereby the feoffee to uses was

made accountable to his *cestui que use*, and although petitions were presented to Henry IV. and Henry V. to suppress the writ, Henry V. negatived them, and the process by writ of subpoena and Bill in Chancery then became and continued to be the practice of the Court down to 1852, when the Chancery Jurisdiction Act remodelling the procedure was passed.

Specify the other Judges of the High Court of Chancery.

(1) The Master of the Rolls; (2) the three Vice-Chancellors, and (3) the Lords Justices of the Court of Appeal.

Why was the Court of Queen's Bench so called, and state its jurisdiction?

It was so called because the Sovereign used to preside there in person.

It had a twofold jurisdiction, the civil or plea side, and the criminal or Crown side. It has a superintending power over all inferior tribunals, and with the exception of revenue matters, on its plea or civil side it has jurisdiction in all personal actions, with an appeal to the Exchequer Chamber, *i.e.* the Judges of the other two Courts, thence to the House of Lords.

What is the jurisdiction of the Court of Common Pleas?

It has jurisdiction in all personal actions and the remnants of real actions known as dower, writ of right of dower, and *quare impedit*.

Acknowledgments of deeds by married women, and appeals from the revising barristers' courts, and the registration of judgments affecting real property, with an appeal to the Exchequer Chamber, thence to the House of Lords.

What is the jurisdiction of the Court of Exchequer?

The Exchequer was a relic of the original old Superior Court of the Kingdom, of Saxon Constitution, known as the *Wittenagemote*, and subsequently as the *aula regis* under the Conqueror—at first intended to manage the revenues of the Crown alone, and subsequently obtaining jurisdiction in personal actions. It derived its name from *Scaccarium*, the chequered cloth on which the

King's accounts were made up. It was formerly a Court of Equity and Common Law, but its equitable jurisdiction was, by 5 Vict. c. 5, transferred to the High Court of Chancery, and now it has jurisdiction merely in all personal actions, and exclusively over the revenue matters, with an appeal to the Exchequer Chamber, thence to the House of Lords.

What is the jurisdiction of the Admiralty Court?

It has jurisdiction (1) in all maritime matters, *i.e.* injuries committed on the high seas; (2) adjudicates on prizes of war, and (3) on booty of war.

What are the divisions of the Supreme Court?

- (1.) Her Majesty's High Court of Justice.
- (2.) Her Majesty's Court of Appeal.

Of what judges are the High Court of Justice constituted?

The Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, the Chief Baron of the Exchequer, the Vice-Chancellors, the Judge of the Probate and Divorce Court, the puisne Judges of the Queen's Bench, the Common Pleas, and Exchequer, and the Judge of the Admiralty Court, except any such Judges as may be appointed ordinary Judges of the Court of Appeal. In the absence of the Lord Chancellor the Lord Chief Justice is the president.

What jurisdiction vests in the High Court?

It is a Superior Court of Record, and has vested in it the jurisdiction of all the Courts before alluded to, including the Courts of Common Pleas of Lancaster and Durham, and the Courts created by Commissions of Assize, of *oyer and terminer* and of goal delivery, or any of such commissions.

By what authorities do the justices of assize sit?

- (1) The commission of the peace; (2) of *oyer and terminer*; (3) gaol delivery, and (4) *nisi prius*, subject to the 29th section of 36 & 37 Vict. c. 66.

Of how many divisions does the High Court of Justice consist, and what several Judges are included in such divisions?

- (1.) The Chancery Division. Judges: the Lord Chancellor (President), the Master of the Rolls, and the Vice-Chancellor.
- (2.) The Queen's Bench. Judges: the Lord Chief Justice of England (President), and the puisne Judges.
- (3.) The Common Pleas. Judges: the Chief Justice (President) and the puisne Judges.
- (4.) The Exchequer. Judges: the Chief Baron (President), and the puisne Judges.
- (5.) Probate, Divorce, and Admiralty Division. Judges: the Judge of the Probate Court (President) and the Judge of the Admiralty Court.

Assuming any causes and matters are not proper to be heard by a single judge, how are they heard? How many Divisional Courts may sit at the same time, and of how many judges is a Divisional Court constituted? Who is the President?

They are heard by the Divisional Courts, any number of which may sit at the same time.

A Divisional Court is constituted by two or three Judges thereof, and is generally composed of three; the senior Judge of those present is the President.

By what courts are the appeals from inferior courts to be determined?

Appeals from petty or quarter sessions, County Courts, or any other inferior courts which formerly might have been brought before any court or judge whose jurisdiction is transferred to the High Court, are heard and determined by the Divisional Courts of the High Court, consisting respectively of such of the Judges as are assigned for that purpose.

Such determination to be final, unless special leave to appeal therefrom to the Court of Appeal is given by the Divisional Court before which the appeal has been heard.

What jurisdiction is vested in the Court of Appeal?

- (1.) The appellate jurisdiction of the Lord Chancellor and

the Court of Appeal in Chancery, and of the Court of Appeal in Bankruptcy.

- (2.) Of the County Palatine of Lancaster.
- (3.) Of the Lord Warden of the Stannaries.
- (4.) Of the Court of Exchequer Chamber.
- (5.) Of her Majesty in Council or of the Judicial Committee of the Privy Council in cases of admiralty or lunacy appeals.

Of what Judges is the Court of Appeal constituted ?

Five *ex officio* Judges, viz., the Lord Chancellor, the chiefs of the Common Law Division, and the Master of the Rolls, and as many ordinary not exceeding three at any one time as her Majesty may appoint; and the Lord Chancellor may request in writing the attendance of an additional Judge from any one or more of the Common Law or Probate Divisions (to be selected by the Division) to attend the sittings of the Court of Appeal.

The first ordinary Judges of the said Court were the former Lords Justices of Appeal, and one other appointed by her Majesty's Letters Patent.

CHAPTER VI.

CIVIL INJURIES COGNIZABLE AT COMMON LAW.

How are injuries cognizable by courts of common law remedied ?

By putting the party injured in the possession of that right whereof he is unjustly deprived, which is effected (1) by delivery of the thing detained, to the rightful owner, or (2) where that remedy is impossible or inadequate, by giving the party injured a satisfaction in damages.

What are the instruments by which these remedies may be obtained ?

Suits or actions, which are defined as the lawful demand of one's right; and these are either (1) personal, (2) real, or (3) mixed.

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What is a personal action, a real action, and a mixed action respectively?

A personal action is one which is brought for the recovery of personal property or damages for the injury sustained.

A real action is one which was brought for the recovery of real property; with the exception of dower, writ of right of dower, and *quare impedit*, these actions were abolished by 3 & 4 Will. IV. c. 27.

Mixed actions were those which sought the recovery of the real property and damages for detaining it, and they also, with the exception of ejectment, were abolished by the above statute.

Distinguish between actions for dower, writ of right of dower, and quare impedit.

An action of dower is brought where a woman seeks to recover her whole dower; writ of right of dower, a part of it; and *quare impedit* is an action brought to recover the presentation on the wrongful deprivation of an ecclesiastical benefice. The peculiarity attached to these actions now is, that they can only be commenced in the Court of Common Pleas, but they are commenced by writ in the ordinary way, with a notice stating which of these forms of action will be proceeded with.

What is the gist of an action of ejectment?

The wrongful withholding of land. It may be brought in any of the Superior Courts.

How are personal actions divided and subdivided?

- (i.) Actions *ex contractu*. (1) Assumpsit; (2) debt, and (3) covenant.
- (ii.) *Ex delicto*. (1) Trespass; (2) case; (3) trover; (4) detinue; (5) replevin.

Under what circumstances do the actions of assumpsit, debt, and covenant respectively lie?

(1) Assumpsit lies for damages of the breach of any simple contract, and so does (2) debt, assuming the amount is liquidated and there is privity between the parties; and debt will lie under the above circumstances where the instrument is under seal; (3) covenant, where the breach arises by deed, and debt will not lie.

What is the gist of the action of trespass, case, trover, detinue, and replevin respectively?

- (1.) Trespass is brought for violence, accompanied with immediate injury.
- (2.) Case where the injury is consequential.
- (3.) Trover for finding and wrongful conversion.
- (4.) Detinue, the illegal detention; and
- (5.) Replevin, for the illegal taking and detaining, as in case of a wrongful distress.

Distinguish between a local and a transitory action.

A local action was one in which the cause of action was confined to a particular locality, as in the case of ejectment from a particular property.

A transitory action was one which might have arisen anywhere, as an assault or breach of contract. The main distinction was that the former must have been tried by a jury of the county in which the lands lay, whereas the latter could have been tried anywhere at the plaintiff's option.

Mention any instances which you can remember tending to prejudice the plaintiff's right of action.

- (1.) That the plaintiff has not sustained any peculiar damage, but that the injury is public.
- (2.) That the injury is a mere *damnum absque injuriâ*.
- (3.) That the cause of action is too remote.

Mention any exceptions to the maxim actio personalis moritur cum personâ which may occur to you.

(1) By 4 Edw. III. c. 7, where there has been a trespass to the personal property of the deceased, the right of action survives to the executors and administrators; (2) also under 3 & 4 Will. IV. c. 42, the right survives in case of an injury to the real estate of the deceased if committed within six calendar months before the owner's death, and the action be brought within one year after the death; (3) also under Lord Campbell's Act, 9 & 10 Vict. c. 93, where the death of a person is caused by a tort which would have entitled the deceased to an action for damages had he survived, his personal representatives may bring an action for the benefit of the husband,

wife, parent, or child, the words parent or child having received an extended meaning under the Act ; and by 27 & 28 Vict. c. 95, assuming there be no executors, or they do not bring the action within six months, then the parties beneficially entitled may bring it in their own names.

CHAPTER VII.

CIVIL INJURIES COGNIZABLE AT COMMON LAW—(*continue*!).

What are injuries to personal security ?

(1) Against a man's life; (2) against his body; (3) against his health; (4) against his reputation.

What are injuries to the body ?

(1) Threats; (2) assault; (3) battery; (4) wounding; (5) mayhem; (6) by negligence.

What are injuries to health and reputation respectively ?

In the former case they may be effected by the unwholesome practices of another, in the latter by (1) malicious and defamatory words; (2) by libel; and (3) by malicious indictments or prosecutions.

What is a privileged communication ?

One made by a person in discharge of a moral duty in relation to matters in which the parties have mutual interests. *Primâ facie* they rebut the inference of malice.

Distinguish between libel and slander.

Libel is the malicious defamation of another by writing, pictures, or print, whilst slander only arises by word of mouth. Libel may be punished criminally as well as civilly, whereas slander can only be punished criminally in a few cases.

How is personal liberty injured?

By false imprisonment, to constitute which (1) the person must be detained, and (2) he must be detained unlawfully. The remedy for which is the writ of *habeas corpus*, and an action for damages.

What are the injuries affecting real property?

(1) Ouster; (2) trespass; (3) nuisance; (4) waste; (5) subtraction; (6) disturbance.

What is ouster and how is it effected?

Ouster is the amotion of possession either from (1) freeholds; (2) chattels real, and it is effected by (1) abatements; (2) intrusion; (3) disseisin; (4) forcement, and (5) discontinuance.

Define the last-mentioned terms.

- (1.) Abatement is the entry of a stranger after the death of the ancestor before the heir.
- (2.) Intrusion is the entry of a stranger after a particular estate of freehold is determined before him in remainder or reversion.
- (3.) Disseisin is a wrongful putting out of him that is seised of the freehold.
- (4.) A forcement is any other detainer of the freehold from him who hath the property, but who never had the possession, and
- (5.) Discontinuance was where the tenant in tail made a larger estate of the land than the law allowed. This is abolished by 8 & 9 Vict. c. 106, s. 4.

What does ouster of chattels real consist in?

Amotion (1) from estates by statute and elegit by a kind of disseisin; (2) from an estate for years effected by a like disseisin or ejectment.

What are the present modes of remedy in cases of ouster?

- (1.) In the case of corporeal hereditaments by entry or an action of ejectment.

- (2.) As to dower, by an action of dower or writ of right of dower..
- (3.) In the case of incorporeal hereditaments. If dower, as above ; if tithes, in an action of ejectment or by distress ; or a next presentation, by an action *quare impedit* ; and in other cases by an action on the case for damages.

What is trespass ? What is the remedy ?

An entry upon and damage done to another's lands by oneself or one's cattle without any lawful authority or cause of justification. The remedy is an action in trespass for damages which used to be styled an action *quare clausum fregit*, and besides a remedy by distress for cattle damage *feasant*.

What is a nuisance, and what are the various kinds ? What are the remedies ?

It is an annoyance or anything that worketh damage or inconvenience, and it is either a public or common nuisance for which an indictment lies, or a private nuisance, which is anything done to the hurt or annoyance of (1) the corporeal ; (2) the incorporeal hereditaments of another.

The remedies for a public nuisance are (1) an action on the case for damages ; (2) the removal or abatement of such nuisance ; or (3) an injunction to restrain or compel the wrongdoer to abate or remove.

What is waste ? What are the various kinds ?

Waste is a spoil and destruction in lands and tenements to the injury of him who hath the remainder or reversion of the inheritance. Waste is of two kinds, voluntary and permissive ; the former is an act committed by the party himself, as the pulling down a house, the latter an act omitted, as letting such house fall down from want of necessary repairs.

In what position are tenants in fee simple, fee tail, and for life as regards waste ?

Tenants in fee simple and fee tail are not liable for waste, save the fact that a tenant in tail after possibility of issue extinct is liable for equitable waste. With regard to a tenant for life it

entirely depends whether or not his estate is "without impeachment of waste;" if it is, he may not only work existing mines, &c., but he may open new ones, &c. (so long as he do not commit equitable waste), otherwise he may only work existing ones; and, by the 25th section of the Judicature Act, the mere fact of being a tenant for life "without impeachment of waste" does not confer the right to commit equitable waste at Common Law unless a clear intention appear in the settlement.

What is the remedy for waste?

An action on the case for damages, or an injunction to restrain threatened, or a repetition of waste.

What is subtraction, and what is the remedy?

When one who owes services to another withdraws or neglects to perform them. This may be (1) of rents and other services due by tenure; (2) of those due by custom. For the subtraction of rents and services due by tenure the remedy is (1) by distress to compel payment or performance; (2) by action to compel payment. For subtraction of services due by custom the remedy is by action on the case for damages only.

What is disturbance, and what are the various kinds?

A disturbance is the hindering or disquieting the owner of an incorporeal hereditament in the regular and lawful enjoyment of it. Disturbances are (1) of franchises; (2) of commons; (3) of ways; (4) of tenure, and (5) of patronage.

Disturbance of franchises is by an action on the case for damages, or in the case of tolls, by distress.

What are the various ways in which a disturbance of commons is effected?

- (1.) By intercommoning without right; remedy, damages by an action on the case or of trespass; besides distress damage *feasant* to compel satisfaction.
- (2.) Surcharging the common; remedies, distress damage *feasant* to compel satisfaction; by an action of trespass, or an action on the case for damages.

- (3.) Enclosure or obstruction ; remedies, restitution of the common, or an action of trespass or on the case for damages.

How are disturbances of (1) ways and (2) tenure remedied ?

- (i.) In the case of ways (1) by an action or on the case for damages ; (2) by abatement, and (3) by injunction.
(ii.) In the case of disturbance of tenure, which is literally driving away the tenants, by an action on the case for damages.

What is disturbance of patronage, and what are the remedies ?

The hindrance of a patron to present his clerk to a benefice, whereof usurpation within six months was a species. The remedy is by writ of *quare impedit*.

How may personal property be divided ?

Personal property is either (1) in possession, or (2) in action.

Of what different kinds are the injuries to personal property in possession ?

(1) By dispossession ; (2) by damage while the owner remains in possession.

How may dispossession be effected ?

(1) By an unlawful taking ; (2) by an unlawful detaining.

What are the remedies for the unlawful taking ?

(1) Actual restitution with damages for the loss of them, which is obtained by action of replevin ; (2) satisfaction in damages by action of trespass or trover.

To whom must an application for a replevin be made, and where may the action be commenced ?

To the registrar of the district in which any distress subject to replevin is taken. The action may be commenced either in the Supreme or the County Court. If in the County Court the replevisor gives security, to be approved by the registrar, to commence his action in the County Court within one month after the date of

the security, and to prosecute with effect, and make return of the goods if return be adjudged.

If in the Superior Court the bond is conditioned to commence the action within one week from the date of the security, and to prosecute such action with effect and without delay, and unless judgment is obtained by default, to prove that he had good grounds for believing that the title either to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that such rent or damage exceeded £20, and to make return of the goods if return be adjudged.

How should the defendant proceed to remove an action of replevin into the High Court?

By writ of *certiorari*. He is to apply to the Court or a judge for such writ, giving security for an amount to be approved by the Master not exceeding £50, conditioned to defend such action with effect; and unless the replevisor shall discontinue or not prosecute such action (or become nonsuit therein) to prove that the defendant had good ground for believing either that the title to some hereditament, or to some toll, market, fair, or franchise was in question, or that the rent or damage in respect of which the distress shall have been taken exceeds £20.

What are the remedies for the unlawful detaining of goods, although lawfully taken?

An action of replevin and damages, or by action of detinue, in which either the thing detained or its value is recoverable, and damages for the detention; or by an action on the case for trover and conversion.

What is the remedy for damage to personal property while in the owner's possession?

By trespass or trespass on the case where the injury is consequential, or by an action for damages, and in certain cases, such as infringements of copyrights, an injunction.

How do injuries to personal property by action arise?

By breach of contracts: (1) expressed; (2) implied.

What are breaches of express contracts, and the remedies ?

- (1.) By non-performance of covenants. The remedy is by an action of debt or covenant, or in case of a contract not under seal, an action of debt or assumpsit.
- (2.) Non-payment of debts. An action of assumpsit and damages for non-payment.
- (3.) In case of failure or breach of contract to deliver a specific chattel; remedy is by action for the chattel or its value, and damages under 19 & 20 Vict. c. 97, and 23 & 24 Vict. c. 126.

What are the injuries to a husband, and the remedies ?

- (1.) Abduction or taking away a man's wife ; remedy, by action of trespass *de uxore raptâ et abductâ* and damages, or by an action on the case.
- (2.) Adultery ; remedy, petition for damages since 20 & 21 Vict. c. 85.
- (3.) Beating a man's wife ; action of trespass for damages in the joint names of husband and wife or a separate one for special damage *per quod consortium amisit* for damages.

What are the injuries which affect a man in his capacity as master ?

- (1.) Retaining his servant before his time is expired ; remedy, by action on the case for damages, and he may also proceed against the servant for non-performance of his agreement.
- (2.) Beating the servant ; remedy, by action of trespass or on the case *per quod servitium amisit* for damages.

CHAPTER VIII.

CIVIL INJURIES COGNIZABLE IN EQUITY.

Show from a few instances that Equity does not act in opposition to the Common Law.

- (1.) The few instances in which equity is called upon to mitigate the hardships of the Common Law.
- (2.) Law as well as equity is equally bound to interpret statute law according to the intention of the legislature.
- (3.) Frauds, accidents, and trusts are in many instances cognizable at Common Law.
- (4.) Equity like Common Law is governed by rules, and the judges act according to precedent.
- (5.) The maxim, equity follows the law.

Mention the discrepancies existing between Common Law and Equity that the Judicature Acts have amended.

- (1.) A tenant for life without impeachment of waste is made liable for equitable waste at Common Law.
- (2.) There is no merger effected at law of a beneficial interest which would not be considered as merged in equity.
- (3.) A mortgagor if entitled for the time being to possession or receipt of the rents and profits, if no notice to enter into possession or receipt, &c., has been given by the mortgagee, may sue in his own name for the recovery of possession or of the rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, unless the cause of action arises on a lease or other contract made by him jointly with any other person.
- (4.) An absolute assignee of a chose in action, of which assignment, notice has been given to the debtor, may sue in his own name.

- (5.) Time is no longer the essence of the contract at law farther than it was previously in equity.
- (6.) The rules of equity as to the maintenance, &c., of infants are to prevail.
- (7.) Where there is any conflict between the rules of law and equity, the rules of the latter shall prevail.

Wherein then in reality does the difference exist between Law and Equity?

(1) In their subjects of jurisdiction ; (2) in their *kind* of relief; and (3) in proceedings.

What business is assigned to the Chancery Division of the High Court by the Judicature Act, 1873?

- (1.) Administration of estates.
- (2.) Dissolution of partnerships and partnership or other accounts.
- (3.) Redemption or foreclosure of mortgages.
- (4.) Raising of portions or other charges on land.
- (5.) Sale and distribution of the proceeds of property subject to any lien or charge.
- (6.) The execution of trusts, charitable or private.
- (7.) The rectification or setting aside or cancellation of deeds or other written instruments.
- (8.) The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases.
- (9.) The partition or sale of real estates.
- (10.) The wardship of infants and the care of infants' estates.

Mention some cases in which Courts of Equity will afford relief in the case of trusts, and how.

- (1.) In equity the trustees are liable to account for all trust moneys and breaches of trusts.
- (2.) In the cases of sales and application of the proceeds of trust property.
- (3.) In the cases of appointments of new trustees.

- (4.) In cases of administration of assets as against trustees, where the suit is instituted by a beneficiary.

In the administration of assets of deceased persons what is the rule that now prevails ?

In the case of administrations after the Judicature Act, 1873, the rule of the Court of Bankruptcy, viz., that all debts are paid *pari passu*, and secured creditors must realize their securities or have them valued and prove for the deficiency only.

Mention the principal Acts of Parliament and sections affecting trustees.

10 & 11 Vict. c. 96 ; 22 & 23 Vict. c. 35, ss. 26, 30, 31 ; 23 & 24 Vict. c. 38, s. 9 ; 23 & 24 Vict. c. 145, ss. 1-7, 25, 26, 28, 29 ; 24 & 25 Vict. c. 96 ; 25 & 26 Vict. c. 108, s. 2.

State very briefly what the last-mentioned statutes respectively relate to.

- (1.) 10 & 11 Vict. c. 96, to the payment into court by trustees and others seeking to get rid of their liabilities.
- (2.) 22 & 23 Vict. c. 35, the relief of trustees, executors, and administrators when making payments under powers of attorney. Sect. 30 to taking the opinion of the court on a trust matter. Sect. 31, trustees' protective and reimbursing clause.
- (3.) 23 & 24 Vict. c. 145 ; ss. 1-7, powers of sale given to trustees ; sect. 25, powers of investment ; sect. 26, infants' maintenance clause ; sect. 28, appointment of new trustees ; sect. 29, trustees' receipts.
- (4.) 24 & 25 Vict. c. 96 ; fraudulent conversion of trust funds.
- (5.) 25 & 26 Vict. c. 108 ; trustees may sell lands, reserving the minerals.

Are there any other cases which occur to you of the exclusive jurisdiction of Equity ?

- (1.) In cases of specific performance equity considering that as done which ought to be done, and a constructive trust

arising in favour of the purchaser as soon as the contract is executed.

- (2.) In cases of injunction to restrain threatened injuries.
 - (3.) Perpetuation of testimony, which arises where the evidence of aged or sole witnesses is liable to be lost, and which, by 5 & 6 Vict. c. 69, extends to any estate in real or personal property even though future.
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CHAPTER IX.

THE LIMITATIONS OF ACTIONS.

Specify the principal statutes of limitation as to real property, and trace the growth of the doctrine.

- (1.) 32 Hen. VIII. c. 2, which limited the time of bringing a writ of right on the seisin of an ancestor not to any certain historical period but to sixty years from the commencement of an adverse possession ; and for a possessory action on the ancestor's seisin to fifty years, and no person was to bring a real action droitural or possessory on his own seisin after thirty years.
- (2.) 21 Jac. I. c. 16, when it limited all writs of formedon (*i.e.*, real actions by remainder-men, reversioners or issue in tail) to twenty years, also provided that no person should make entry into any lands but within twenty years after his right accrued with the saving of rights of persons under disability ; but actions in which it was unnecessary to allege any seisin, such as actions of dower, escheat, waste, &c., the action of *quare impedit*, and suits by lay impropriators for tithes remained free from any limitation as to time.
- (3.) 3 & 4 Will. IV. c. 27, the principal provisions of which are detailed in the next answer.

State briefly the principal provisions of 3 & 4 Will. IV. c. 27.

- (1.) No person can bring an action to recover any land or rent, but within twenty years after the right first accrued except in cases of disability, when a further period of ten years is allowed, not to exceed in the whole forty years.
- (2.) The rule is the same at Equity as in Common Law save in the following exceptions :—
 - (i.) Where there is an express trust in favour of a claimant, time begins to run against him only from the moment when the land or rent has been conveyed for valuable consideration to a purchaser without notice.
 - (ii.) When fraud constitutes the ground of the equitable demand, time begins to run from the moment when the fraud might with reasonable diligence have been discovered.
 - (iii.) The usual protection afforded by the Court to *bonâ fide* purchasers for valuable consideration without notice being reserved, as well as all other rules of the Court in refusing relief on the ground of acquiescence or otherwise.
 - (iv.) In the case of a mortgagee having obtained possession, the mortgagor must bring his redemption suit within twenty years after such possession or any written acknowledgment of the title of the mortgagor signed by the mortgagee.
- (3.) Only six years' arrears of rent or interest chargeable on land or payable out of a legacy can be recovered.
- (4.) An action to recover the right of presentation to a benefice must be brought within three adverse incumbencies if they together amount to sixty years, if not then within such further time as will make up the period of sixty years, and no action can be brought after the lapse of one hundred years.

Within what time must you commence the following actions :

- (1) trespass ; (2) case ; (3) trover ; (4) detinue ; (5) replevin ; (6) debt ?

In all the above actions with the exception of verbal slander and

arrears of rent due under a deed, the action must be commenced within six years, except in the cases of disability, as infancy; feme coverts; persons *non compos mentis*; and debtors being beyond the seas; under which circumstances the party has a like period to bring his action after the removal of the disability.

Within what time must you commence an action for trespass to the person; what is the distinction as regards slander?

Actions for assault and battery, &c., must be brought within four years, slander within two years, but libel six years.

Where there are several parties who are entitled jointly to sue in an action of contract, and one of them is abroad, does the statute run against the others?

It does, because there is no disability as regards the parties who reside in England, and who ought to have commenced the action; but a judgment obtained against those residing here cannot be pleaded in bar to proceedings taken against those abroad when they return.

Should the period within which the action ought to have been commenced have expired, how can the right of action be revived?

By a promise or acknowledgment in *writing* signed by the party to be charged or his agent, but it must be remembered that where there are two or more joint contractors one does not lose the benefit of the Statute of Limitations, by reason only of the written acknowledgments of the others, nor, since 19 & 20 Vict. c. 97, will part payment by one co-contractor revive a statute-barred debt as against another.

Within what time must an action of debt on a specialty be brought?

By 3 & 4 Will. IV. c. 42, within twenty years from the accruing of the cause of action, except in cases of disability.

Within what time must an action be brought against a Justice of the Peace for anything done in execution of his office?

Within six calendar months.

Does the Statute of Limitations destroy the right to the matter in question, and how can the effect of the statute be provided against?

No, it does not, it only destroys the remedy ; if for instance, there is any right of lien existing, the plaintiff can always enforce it. The effect of the statute can be provided for, by either issuing a writ of summons and getting it renewed every six months, or by a written acknowledgment or part payment of the debt or interest.

CHAPTER X.

THE PROCEEDINGS IN AN ACTION.

What effect has the Judicature Act, 1873, had upon terms?

They are abolished so far as the sittings of the High Court of Justice or the Court of Appeal are concerned, but in all other cases in which the terms into which the legal year is divided are used as a measure for determining the time within which any act is required to be done, the same may be referred to for the like purpose until provision is otherwise made.

What do you know of " terms," and how many are there?

They were periods of the year set apart for the transaction of business without interfering with the holy seasons of the Church. There are four terms, deriving their names from some saint's or festival day immediately preceding them, viz. : (1) St. Hilary ; (2) Easter ; (3) Holy Trinity ; and (4) St. Michael. By 11 Geo. IV. & 1 Will. IV. c. 70, amended by 1 Will. IV. c. 3, Hilary term lasts from the 11th to the 31st January ; Easter from the 15th April to the 8th May ; Trinity from the 22nd May to the 12th June ; and Michaelmas from the 2nd to the 25th November.

What kind of business was principally transacted in term time, and what effect has the Judicature Act?

Principally *banc* business ; the assize and *nisi prius* business being taken in vacation ; but now by the Judicature Act, 1873, sec. 26,

it is enacted, that as far as relates to the administration of justice, legal terms are abolished, and these are no longer terms applicable to any sitting or business of the High Court of Justice or of the Court of Appeal or of any Commissioners ; but in all other cases in which the terms into which the legal year is divided are used as a measure for determining the time within which any act is required to be done, the same may continue to be referred to, for the like purpose until provision is otherwise made.

How were proceedings in actions and suits commenced in the various Courts ?

- (1.) In the Courts of Common Law by writ of summons.
- (2.) In the Courts of Equity by bill or information.
- (3.) In the Admiralty Courts by a cause *in rem* or *in personam*.
- (4.) In the Probate Court by a citation ; and
- (5.) In the Divorce and Bankruptcy Courts by petition.

Now under the Order I. of the Judicature Act, 1875, all actions and suits are to be instituted by "an action" and commenced by writ of summons, save that the rule does not apply to proceedings commenced by petition or summons.

By what statutes were the Common Law proceedings in an action regulated ?

By the three Common Law Procedure Acts of 1852, 1854, and 1860, viz. : 15 & 16 Vict. c. 76, 17 & 18 Vict. c. 125, and 23 & 24 Vict. c. 126.

What is the first step in an action ?

To issue a writ of summons against the defendant describing him of his residence and calling upon him to enter an appearance within the time limited after service.

How was the writ of summons indorsed ?

(1) With the name and place of abode of the solicitor who serves it out, and where he is acting as agent the name and place of abode of the country solicitor or the address of the plaintiff if it is sued out by him in person ; (2) in an action of debt with the amount of the debt and costs, and a notice that if they be paid within four days from demand further proceedings will be stayed :

(3) in cases where the defendant resides within the jurisdiction of the Court and the claim is for a debt or a liquidated demand in money with or without interest arising upon a contract express or implied, the plaintiff can specially indorse his particulars of demand in the form contained in Schedule A to the Act of 1875, which is simply that of a debtor and creditor account giving credit for any payments, &c. It must be remembered that in pursuance of Order II. r. 1 of the Judicature Act, 1875, the writ of summons must be indorsed with the nature of the claim made, or of the relief or remedy required in the action.

What is the effect of the nonjoinder or misjoinder of parties to an action?

By Order XVI. r. 13 of the Judicature Act, 1875, no action is to be defeated by reason of the misjoinder of parties, and the Court or Judge may order any names improperly joined to be struck out and any necessary parties, either plaintiffs or defendants, may be added with their consent.

How long did a writ of summons continue in force, and how might it be continued?

For six months from its date as a general rule, and it always could be renewed for the like period by being restamped.

Assuming the defendants to live in different counties, what was the practice?

To issue duplicate originals, or as they are termed concurrent writs, and send them off for service; they remain in force during the currency of the original writ, and the renewal of the original was a renewal of the concurrent.

How should a writ of summons be served?

Where practicable, personally, but by Order IX. r. 2 of the Judicature Act of 1875, if the plaintiff cannot effect prompt personal service an order may be made for substituted service or for substitution of notice for service as may seem just.

Assuming a defendant not to appear to a writ of summons specially indorsed, for what amount may judgment be signed?

By Order XIII. r. 3, for any sum not exceeding the sum

indorsed on the writ together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs.

Under what circumstances must a defendant obtain leave to defend the action ?

By Order XIV. r. 1, where the defendant appears on a writ of summons specially indorsed, the plaintiff may, on affidavit verifying the cause of action and swearing that in his belief there is no defence to the action, call on the defendant to show cause why the plaintiff should not be at liberty to sign final judgment for the amount with interest and costs ; and the Court or a Judge may, unless the defendant by affidavit or otherwise satisfy the Court or a Judge that he has a good defence on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly, otherwise a statement of claim must be delivered.

Under what circumstances can you arrest a defendant about to quit England in order to avoid a demand ?

By 32 & 33 Vict. c. 62, s. 6, where the plaintiff proves to the satisfaction of a Judge on affidavit that he has good cause of action against the defendant to the amount of £50 or upwards, and that there is probable cause for believing that the defendant is about to quit England unless forthwith apprehended, and that the defendant's absence will materially prejudice the plaintiff in the prosecution of such action, such Judge may order the defendant to be arrested and imprisoned for any period not exceeding six months, unless he give security not to go out of England without leave of the Court. The order is obtainable at any time between the issue of the writ and final judgment, and the defendant is imprisoned either for the time before mentioned or until he gives a bond in two sureties to the satisfaction of the plaintiff, or deposits the sum mentioned in the order as security.

What are the requisites of the statement of claim ?

By Order XIX. rr. 1 & 2 of the Judicature Act, 1875, it states the division of the High Court in which the action is commenced, the name of the plaintiff and defendant, and the day of the month

and year it is pleaded, and it contains as briefly as possible the statement of complaint and of the relief or remedy to which the plaintiff claims to be entitled.

What is the rule now as to venue ?

By Order XXXVI. r. 1 of the Judicature Act, 1875, local venue is abolished, and when the plaintiff purposes to have the action tried elsewhere than in Middlesex he names in his statement of claim the county or place in which he proposes the action shall be tried, and where no place of trial is named, the place of trial is, unless a Judge otherwise order, the county of Middlesex.

Under what circumstances would the defendant demur to the plaintiff's statement of claim ?

Where the defendant admits the facts but denies the sufficiency of the statement of claim in point of law to entitle the plaintiff to the remedy he seeks, otherwise the defendant must within eight days from the service of statement of claim deliver a statement of defence, Order XXII. r. 1.

Under what circumstances is a set-off now allowed ?

By Order XIX. rr. 3 & 10 of the Act of 1875, any right or claim may now be the subject of a set-off or counterclaim by the defendant, whether such set-off or counterclaim sound in damages or not. And such set-off or counterclaim shall have the same effect as a statement of claim in a cross action so as to enable the Court to pronounce a final judgment in the same action both on the original and on the cross claim.

And the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant as much as he may be entitled to upon the merits of the case.

After the delivery of statement of defence by the defendant, what is the plaintiff's next step ?

The plaintiff must either demur or within twenty-one days from the delivery of the defence deliver his statement of reply, Order XXIV. r. 1; ultimately the parties' pleadings end by what is

technically termed a joinder of issue, *i.e.*, a distinct affirmation on the one side, and a denial on the other.

Can a plaintiff join more than one cause of action in the same suit, or what are the restrictions ?

Subject to the rules the plaintiff may unite in the same action or in the same statement of claim several causes of action, but if it appear to a Court or a Judge that they cannot be conveniently tried together, separate trials of any of such causes of action may be ordered, or such other order may be made as may be necessary or expedient for the separate disposal thereof.

Before whom are actions now heard ?

Either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and jury, or before an official or special referee with or without assessors.

How is a cause at nisi prius tried ?

The pleadings having been delivered between the parties, the cause is entered and notice of trial given, two copies of the pleadings being left for the use of the Judge ; evidence is got up, notices to produce and admit issued, witnesses subpoenaed, briefs are delivered, and the cause tried in due form, either before a common or special jury summoned in due form, and liable of course to be challenged by either party.

How is evidence now taken ?

In the absence of any agreement between the parties, and subject to other of the Judicature rules, the witnesses at the trial of any action or of any assessment of damages are examined *vivâ voce* or in open Court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial on such conditions as the Court or a Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before a Commissioner or Examiner ; provided that where it appears to the Court or a Judge that the other party *bonâ fide* desires the production of a

witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Order XXXVII. rules 1-4.

What are the various statutes which govern the competency of witnesses, and state briefly their effect?

- (1.) By 6 & 7 Vict. c. 85, interested persons, not parties, and criminals are good witnesses, but the jury take the evidence for what it is worth.
- (2.) By 14 & 15 Vict. c. 99, parties to suits (except in breach of promise and adultery cases) are competent and compellable to give evidence on behalf of either or any of the parties to the suit, but no person is compellable to answer questions tending to criminate himself.
- (3.) By 16 & 17 Vict. c. 83, husbands and wives are competent and compellable in all civil cases to give evidence on behalf of either or any of the parties to a suit, but the Act does not extend to criminal cases.

Further, is the husband or the wife liable to disclose any communication made to each other during marriage?

By 32 & 33 Vict. c. 68, the parties to any action for breach of promise of marriage or adultery are competent and compellable witnesses, but in the case of breach of promise of marriage, the woman's evidence must be corroborated; and in the case of adultery, the party is not bound to confess the adultery unless he or she has previously given evidence in disproof of his or her alleged adultery, and by the 4th sect. of the above Act, persons objecting to take an oath may by leave give evidence on declaration, but he is liable to the penalties of perjury for false evidence.

In what cases, and how, may a party producing a witness impeach his credit?

By the 22nd sect. of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), when a party calls a witness who in the opinion of the Judge proves adverse, he may contradict him by other evidence or, by leave of the Judge, prove that he has at other times made a statement inconsistent with his present testimony,

but before such last mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such a statement.

How would you try to avoid the expense of proving a document in your own possession?

Give the other side notice to admit saving all just exceptions, and if this be not done you are justified in putting the other side to the expense of the proof, unless the Master certifies that the refusal to admit was reasonable.

If a deed or document is in the possession of the adverse party, what is the course to be pursued?

Give the other side notice to produce it and to allow copies to be taken or serve interrogatories, or both, and at the same time apply for an order for production.

What alteration has been made in the law as to the necessity of calling attesting witnesses to prove documents?

By 17 & 18 Vict. c. 125, instruments to the validity of which attesting witnesses are not necessary, may now be proved by admission or otherwise, therefore it is not necessary to call the attesting witness unless attestation is necessary to give the instrument validity.

Under what circumstances can application be made for a new trial?

(1) In default of the Judge; (2) of the jury, and (3) of the successful party.

In the case of the Judge for wrongfully admitting or rejecting evidence, or misdirecting the jury on a point of law.

In the case of the jury for casting lots for their verdict or giving excessive or too small damages.

In the case of the successful party on the ground of surprise or perjury of witnesses.

Distinguish between an interlocutory and final judgment.

An interlocutory judgment is one given in the course of a suit, and which does not finally ascertain the question of damages, as in

the case of a judgment obtained by default for breach of promise of marriage. A writ of inquiry would have to issue to the sheriff, who sits by his under-sheriff to assess the damages, whereas a final judgment is one which does put an end to the action, and upon which execution can issue.

The judgment having been entered, how is it enforced?

By a writ of execution (a *fiery facias*) against the goods and chattels, or by a writ of *elegit* against the lands of the debtor, which writ is by 1 & 2 Vict. c. 110 extended to all the lands, tenements, or hereditaments of the debtor of which he or any other person in trust for him may be seised or possessed, thus including leaseholds and lands over which the debtor has a power of appointment.

How has the question of judgments been affected by 23 & 24 Vict. c. 38?

In addition to the judgments entered up after the passing of the Act being registered and re-registered, a writ of execution must be issued and registered in the name of the creditor, and actually put in force within three calendar months of the date of registration before *bonâ fide* purchasers or mortgagees can be affected.

How has 27 & 28 Vict. c. 112 affected the question of judgments?

No land will be bound by a judgment entered up after the passing of the Act until actually delivered in execution; such writ of execution now to be registered in the name of the debtor and not of the creditor. And the execution creditor may, if he prefers it, petition the Court of Chancery for a sale.

What is the principal provision of the County Courts Amendment Act, 1867 (30 & 31 Vict. c. 142) as to costs?

That in actions of contract unless the plaintiff recover more than £20, and in actions of tort more than £10, he will be deprived of costs unless the Court or a Judge certifies for them.

How are appeals now made, and within what time?

By way of rehearing on motion with notice to the parties affected by the appeal, and notice must also be served on any other persons

the Court or Judge may deem necessary. Should the judgment be a final one the period for appealing is one year, if an interlocutory one twenty-one days, except by special leave.

What may be taken under a writ of fi fa ?

Under a *fi fa* the sheriff may take money or bank notes, cheques, bills of exchange, promissory notes, specialties or other securities for money belonging to the defendant, delivering the notes and money to the plaintiff, and holding the cheques, bills, &c., as security for the amount levied, and suing in the name of such sheriff for the recovery of the sums when the time of payment arrives, and paying over the money, when recovered, to the creditor.

What is a writ of elegit, and why is it so called ?

By 13 Edward I. c. 18, it was enacted that the creditor should have the election either to have a writ of *fi fa*, or that the sheriff should deliver to him the chattels of the debtor (saving the oxen and beasts of the plough) and a half of the lands.

It was called a writ of elegit because the creditor thereby elected to have his remedy against the lands instead of proceeding by a *fi fa*. By 1 & 2 Vict. c. 110, the whole of the lands may be taken under an elegit, but in order that judgments may bind purchasers, mortgagees, and creditors, they must be duly registered in manner required; and by 2 & 3 Vict. c. 11, the registration must be repeated every five years.

What is a charging order ?

It is an order made by a Judge of the Court in which judgment has been recovered that any government stock, funds, annuities, &c., standing in the name of the judgment debtor in his right or in the name of any person in trust for him, may be charged with the payment of the judgment debt and interest. This charge it must be remembered cannot be enforced until *six months* after the order.

What is a garnishee order ?

It is an order obtainable from a Judge at Chambers under the Common Law Procedure Act of 1854, attaching the debts due

from third persons to the judgment debtor, who may be compelled to produce his books, or may be orally examined, for the purpose of ascertaining such facts, and service of the order binds the debt in the hands of the third party or garnishee. The garnishee may, if he choose, attend and dispute the point; but if he do not appear and the order be made and served, execution may issue against him without any further writ of summons.

What is an interpleader?

Where two or more persons claim the same thing of a third wherein he claims no interest and is ignorant to which of them it belongs, he may apply to the Court or Judge to compel them to interplead or litigate the right between themselves without involving him therein.

What is the practice on an interpleader?

Under 1 Will. IV. c. 58, a summons is taken out, and served on both parties, supported by affidavit showing (1) that the applicant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same; (2) that he does not collude with such third party; and (3) is ready to bring the subject-matter into Court, or pay or dispose of it as ordered. If either party do not appear, his claim is barred. If both appear, and there is really a question between them, the Judge may, when the amount in dispute is small, or the question is one of law, and the facts are not in dispute, decide the matter summarily.

CHAPTER XI.

WRIT OF MANDAMUS.

What is a writ of mandamus?

The prerogative writ of mandamus, which issues out of the Queen's Bench alone on motion, is a remedial writ of a very ex-

tensive nature, chiefly confined to cases where relief is required for infringement of public rights, in which the public at large are interested.

The writ of mandamus, granted under 17 & 18 Vict. c. 125, applies to the cases of infringement of duties of a public or quasi-public nature, in which the plaintiff is personally interested.

By the 25th sect. of the Judicature Act, 1873, sub-section 8, a mandamus is now granted upon interlocutory order, in all cases in which it appears to the Court just or convenient.

BOOK VI. OF CRIMES.



CHAPTER I.

THE NATURE OF CRIMES AND THEIR PUNISHMENTS.

In treating of public wrongs what may be considered ?

(1) The general nature of crimes and punishments ; (2) the persons capable of committing crimes, and their several degrees of guilt ; (3) the several species of crimes, and their respective punishments ; (4) the means of prevention ; (5) the method of punishment.

What is a crime ?

A crime or misdemeanor is an act committed or omitted in violation of a public law, either forbidding or commanding it.

How are crimes distinguished from civil injuries ?

In that they are a breach and violation of the public rights, due to the whole community considered as a community, whereas civil injuries are a breach and violation of private rights due to individuals considered merely as individuals.

How are offences technically divided according to the English Law ? and distinguish between them.

Into (1) felonies, which are of feudal origin, and comprise every species of crime which occasioned at Common Law the forfeiture of land and goods ; (2) misdemeanors, which by our Common Law are deemed to be inferior in degree to felony.

How may punishments be considered ?

(1) As to the power ; (2) the end ; and (3) the measure of the inflictions.

In whom is the power or right of inflicting human punishments ?

For natural crimes, or such as are *mala in se* by the law of nature, in every individual, but by the fundamental contract of society it is now transferred to the sovereign power, in which also is vested by the same contract the right of punishing positive offences or such as are *mala prohibita*.

What is the end of human punishments ?

To prevent future offences, (1) by amending the offender himself ; (2) by deterring others through his example ; (3) by depriving him of the power to do future mischief.

How is the measure of human punishments to be determined ?

By the wisdom of the sovereign power, and not by any uniform universal rule, though that wisdom may be regulated and assisted by certain general equitable principles.

CHAPTER II.

PERSONS CAPABLE OF COMMITTING CRIMES.

Who are capable of committing crimes ?

All persons, unless there be in them a defect of will, for to constitute a legal crime there must be both a vicious will, and a vicious act.

Mention the cases in which the will does not concur with the act.

- (1.) Where there is a defect of understanding.
- (2.) Where no will is exerted ; and
- (3.) Where the act is constrained by force or violence.

Mention the cases in which a vicious will is wanting.

(1) Infancy; (2) idiocy or lunacy; (3) drunkenness which, however, does not excuse the crime; (4) misfortune or chance; (5) ignorance or mistake of fact; (6) compulsion, or necessity, which is (a) that of civil subjection; (b) that of duress per minas; (c) that of choosing the least pernicious of two evils where one is unavoidable; (d) that of want or hunger, which is no legitimate excuse.

At what age are infants amenable to the Criminal Law?

With regard to felonies, infants under seven are deemed incapable of them; between seven and fourteen they are *primâ facie* deemed *doli incapaces*, unless it appear to the Court that they are *doli capax*, and the *malitia supplet ætatem* is the maxim except in cases of rape; after fourteen an infant is presumably *doli capax*. In some cases of misdemeanor, and more particularly in cases of omission, as not repairing a bridge, or highway, &c., the law of England privileges an infant so as to escape fine and imprisonment, because not having the means until twenty-one he wants the capacity to do those things which the law requires, but in cases of notorious breaches of the peace, like riots, battery, or the like, which infants, when full-grown, are fully capable of committing, infants above the age of fourteen are equally liable as persons of twenty-one.

What degree of proof is necessary to excuse a madman from punishment?

That he was perfectly unaware of the nature, character, and consequence of the act he was committing.

Is drunkenness an excuse for crime?

No, it is not; on the contrary, rather as an aggravation of the crime, but it is *primâ facie* evidence that the act was not premeditated.

Is misfortune or chance, ignorance or mistake, an excuse for an unlawful act?

It depends on whether it was the consequence of a lawful act or not; if the former, it is an excuse, otherwise it is not; with regard to ignorance or mistake, it must be of a matter of fact, and not of law.

Can a wife be convicted of any offences committed in the presence of her husband?

She cannot be convicted of theft, burglary, or the like, because it may be fairly assumed she is acting under the coercion of her husband, but she may be in cases of murder, manslaughter, and the like, as also of treason.

Are there any other compulsions or necessities which afford an excuse for committing an offence?

In the case of duress *per minas*, that is, threats which induce a fear of death or bodily harm; and a man may kill another in self-defence.

Can the sovereign commit any crime?

No; from the excellence and dignity of the Crown, he is incapable of doing wrong.

CHAPTER III.

PRINCIPALS AND ACCESSORIES.

What are the different degrees of guilt in criminals?

(1) As principals; (2) as accessories.

Distinguish between a principal in the first and second degree.

A principal in the first degree is he who commits the act. A principal in the second degree is he who is present at aiding and abetting the commission.

What is an accessory?

He who does not commit the act, nor is present at the commission, but is in some sort concerned therein, either before or after.

In what offences can there be accessories?

Only in felonies; in high treason and misdemeanors all the

parties are principals. In manslaughter there can be no accessory *before* the fact, because of the unpremeditation of the act.

What is an accessory before the fact ?

He is one who, being absent when the crime is committed, hath procured, counselled, or commanded another to commit it.

What is an accessory after the fact ?

Where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon.

Is there any and what recent alteration in the trial and punishment of accessories either before or after the fact ?

By 24 & 25 Vict. c. 94, sect. 1, an accessory before the fact may be indicted, tried, convicted, and punished as if he were a principal felon ; and by the 3rd section, an accessory after the fact may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted or convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

Can accessories to a felony be indicted after the conviction of the principal ; and, if so, under what statute ?

By 24 & 25 Vict. c. 25, sect. 5, if any principal offender be convicted of felony, it shall be lawful to proceed against an accessory before or after the fact in the same manner as if such principal felon had been attainted thereof, notwithstanding the principal die or be pardoned, or otherwise delivered before attainder, and every such accessory shall upon conviction suffer the same punishment as he would have suffered if the principal had been attainted.

CHAPTER IV.

OFFENCES AGAINST THE PERSON.

What are crimes against the personal security of individuals ?

- (1.) By homicide or destroying of life.
- (2.) By other corporal injuries.

What are the various kinds of homicide ?

- (1) Justifiable ; (2) excusable ; (3) criminal.

Under what circumstances is homicide justifiable ?

- (i.) By necessity and command of the law.
- (ii.) By permission of law (1st) for the furtherance of public justice ; (2nd) for the prevention of some forcible felony.

Under what circumstances is homicide excusable ?

- (1.) *Per infortunium* or by chance medley, as where a person at work accidentally kills another.
- (2.) *Se defendendo* or in self defence.

What is criminal homicide ?

The killing of a human creature without justification or excuse, effected by (1) killing one's self, or (2) killing another.

What is self murder ?

Where one deliberately or by any unlawful malicious act puts an end to his own life. It is a felony, and the punishment is an ignominious burial, *i.e.*, without Christian rites (4 Geo. IV. c. 52); but 33 & 34 Vict. c. 23 abolishes the forfeiture of goods and chattels previously consequent upon this offence.

Of what offences does killing another consist ?

- (1) Manslaughter ; (2) murder.

Define manslaughter.

The unlawful killing of another without malice express or implied, voluntarily or involuntarily, in commission of an unlawful act. The crime is a felony and the punishment penal servitude for life, or not less than five years, or imprisonment with or without hard labour, or a fine in addition to or substitution for such punishment.

Define murder.

Murder is when a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the king's peace, with malice aforethought, either express or implied. The crime is a felony, and is punishable with death, 24 & 25 Vict. c. 100, to be carried out in the manner provided by 31 Vict. c. 24.

Within what time must death ensue to constitute murder ?

Within a year and a day, the whole day being counted as the first upon which the injury was received.

Of what offence is a person guilty who attempts to murder ?

Attempts to murder until very recently amounted to a capital felony ; but by 24 & 25 Vict. c. 100, s. 11, it is now enacted that whosoever shall administer, or cause to be administered to or taken by any person, any poison or other destructive thing, or shall, by any means whatsoever, wound or cause any grievous harm to any person with intent to commit murder, shall be guilty of felony, and on conviction may be sentenced to penal servitude for life, or for not less than five years, or imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. See also sect. 15 of the above Act.

What is Mayhem ?

Mayhem may be properly defined as the violently depriving another of the use of such of his members as may render him less able in fighting, either to defend himself or to annoy his adversary. Formerly, the maimer was punished in like manner, the old law being *membrum pro membro*. Now, by 24 & 25 Vict. c. 100, sect. 18, the offence is a felony, and is liable to the same punishment as last mentioned in the case of an attempt to murder.

CHAPTER V.

OFFENCES AGAINST PROPERTY.

What are the crimes which affect the habitations of individuals ?

(1) Arson ; (2) burglary ; (3) sacrilege and housebreaking by day.

What is arson, and what the essential ingredient in the offence ?

The *malicious* and wilful burning of the house, outhouses, &c., of another man. The burning must be malicious to constitute arson, otherwise it is only a trespass.

On an indictment and conviction of arson, does the punishment differ in the cases of the premises being inhabited or not ?

By 24 & 25 Vict. c. 97, s. 2, setting fire to any dwelling-house, any person being therein, is punishable by penal servitude for life, or not less than five years, or to imprisonment, &c., with whipping. See also sects. 1, 3, 4, and 5, under which similar punishments are adjudged in the cases of the buildings and property therein mentioned. In other cases, the punishment is fourteen years, instead of for life, or by imprisonment, &c.

What is burglary ?

Burglary is the breaking and entering by night into a mansion or house with intent to commit a felony.

What are the four things to be considered in burglary ?

- (1.) The time, which by 24 & 25 Vict. c. 96, must be between nine in the evening and six in the morning.
- (2.) The place : It must be a mansion or dwelling-house, or some building communicating with it.
- (3.) As to the manner, there must be both a breaking and an entry to complete it. They need not occur together ; there may be the breaking first, and then the entry, or the entry, and then by 24 & 25 Vict. c. 96, s. 51, the breaking out.

- (4.) As to the intent, it must be felonious, otherwise it is only a trespass.

What is the punishment for burglary?

It is a felony, and by 24 & 25 Vict. c. 96, s. 52, punishable with penal servitude for life, or any term not less than five years, or with imprisonment, &c.

Is a person who enters into a dwelling-house with intent to commit a felony guilty of any offence, and under what statute?

If by night, by 24 & 25 Vict. c. 96, s. 54, it is a felony, and punishable with penal servitude for seven years, or imprisonment, &c.

Is it an offence to be found at night armed with any dangerous weapon with intent to break into a dwelling-house and to commit a felony?

By 24 & 25 Vict. c. 96, ss. 58, 59, it is a misdemeanor, as also being found in possession of a housebreaking tool by night, or with a blackened face, or otherwise disguised. The punishment is penal servitude for five years, or imprisonment (with or without hard labour) not exceeding two years, or on a second conviction, either for the above offence or a felony, penal servitude not exceeding ten years.

What is sacrilege and its punishment?

The breaking and entering any church, chapel, meeting-house, or other place of divine worship, and committing any felony therein, and breaking out of the same.

By 24 & 25 Vict. c. 96, ss. 50, 52, the punishment is the same as burglary, and by the 57th sect., breaking into the same with intent to commit any felony therein is a felony punishable with imprisonment, &c., or by penal servitude for seven or not less than five years.

What is house-breaking, and what is the punishment?

The breaking and entering any dwelling-house, school-house, shop, warehouse, or counting-house, and committing a felony therein, and breaking out of the same, the like in the case of any build-

ing within the curtilage of a dwelling-house occupied therewith, but not being part thereof. By 24 & 25 Vict. c. 96, ss. 55, 56, the punishment is penal servitude for not more than fourteen nor less than five years, or imprisonment, &c.

What is larceny, and what is necessary to constitute the crime ?

Larceny or theft (*latrocinium*) is the felonious taking and carrying away of the personal goods of another with the intent to deprive the owner permanently of his property therein. It is either simple, aggravated, and mixed, or compound.

To constitute larceny, there must be an unlawful taking and carrying away (*cepit et asportavit*) of personal goods, with intent to deprive the right owner, or, as it is technically expressed, the carrying away must be *animo furandi*.

What is sufficient removal of the goods to render the offence of larceny complete ?

The mere removal from the place where found, although they are not quite made off by the offender, will be a sufficient *asportavit* to constitute larceny.

What kinds of property are not subjects of larceny at Common Law ?

- (1.) Treasure trove or wreck until seizure.
- (2.) A corpse.
- (3.) Animals *feræ naturæ*, and unreclaimed.
- (4.) Dogs and other animals kept for pleasure merely.

If the owner of stolen property be unknown can larceny be committed ?

It can, if the taker reasonably believes that the proper owner can be found.

What is the punishment for simple larceny ?

For simple larceny penal servitude for five years, or imprisonment, &c., with whipping (24 & 25 Vict. c. 96, s. 4).

For larceny, after conviction of an indictable misdemeanor, punishable under the above Act, penal servitude for not more than seven nor less than five years, or imprisonment, &c., with whipping

(s. 8) ; or, after a previous conviction for felony, penal servitude for not more than ten nor less than five years, or imprisonment, &c., with whipping (s. 7).

What is the offence and punishment for stealing in a dwelling-house to the value of £5?

It is a felony punishable with penal servitude for fourteen years, or not less than five years, or to imprisonment, &c. (24 & 25 Vict. c. 96, s. 60).

What is the punishment for stealing in a dwelling-house, and by menaces putting any one in fear?

It is a felony punishable as mentioned in the last answer (s. 61).

Define what is robbery or stealing from the person?

Robbery is the forcible taking from the person of another, of goods or money to any value, by violence, or putting him in fear.

(1) There must be a taking to constitute the offence, but, (2) the value of the thing taken is immaterial; (3) the taking must be by force, or a previous putting in fear, which latter distinguishes it from other larcenies.

What is the offence of robbing, and what the punishment?

It is a felony, and the punishment is penal servitude for fourteen years or not less than five years, or imprisonment, &c.

What offence is an assault with intent to rob, and can a defendant be found guilty of this upon an indictment for robbery?

The defendant can be so indicted, and if convicted it is a felony, and the punishment penal servitude for five years, or imprisonment, &c. 24 & 25 Vict. c. 96, ss. 41, 42.

What is the punishment for robbery, &c., being armed with offensive weapons?

By 24 & 25 Vict. c. 96, ss. 43, 44, whosoever being armed with any offensive weapon shall rob, or assault with intent to rob, or shall rob any person, and at the time or immediately after shall strike or wound such person, is liable to be sentenced to

penal servitude for life, or less, or to imprisonment, &c., with whipping.

Is it an offence to send a letter demanding money with menaces, or threatening to accuse of a crime with intent to extort?

It is a felony in both cases; if in the latter the crime is punishable with death, or penal servitude for not less than seven years, or of an assault or attempt to commit a rape, &c. In the first case put, the offence is punishable as mentioned in the last answer.

With what intent must a demand or menace or threat by force to obtain any property, &c., be made to complete the case of felony, and what is the punishment?

The demand, &c., must be made with intent to steal. The punishment is penal servitude for five years, or imprisonment, &c.

Is a person who compels or induces another by threats to execute a valuable security, guilty of any offence.

Felony, punishable with penal servitude for life, or five years, or imprisonment, &c., but not whipping.

How would you distinguish between larceny and embezzlement?

Embezzlement is a theft by clerks, servants, or agents, and is distinguishable from larceny in that the former is committed in respect of property which is not at the time in the actual or legal possession of the owner.

To what crime does embezzlement of money by a clerk or servant amount, and what is the punishment?

Felony, punishable with penal servitude for fourteen years, or not less than five, or imprisonment, &c., or whipping, if under sixteen.

Of what offence is a person guilty, who being intrusted with money or securities for money, with advice in writing as to the disposal or delivery, converts the same to his own use, or that of any other person?

Should the person to whose use the same is converted be other than the person by whom he was so originally intrusted, it is a mis-

demeanor, and the party committing the same is liable to penal servitude not exceeding seven years, or to imprisonment, &c.

What is the punishment if an agent, a broker, banker, solicitor, &c., embezzles money or securities intrusted to him.

The offence is a misdemeanor, punishable as mentioned in the last answer.

Under what circumstances can a factor pledge the goods of a principal against his orders, without rendering himself criminally responsible?

By 24 & 25 Vict. c. 96, s. 78, if the amount for which the goods are pledged do not exceed the amount then justly owing to him from his principal, together with the amount of any bill of exchange drawn by or on account of the principal, and accepted by the factor or agent.

Can a trustee, who appropriates trust monies to his own use, be indicted for any offence; if so, what is the punishment?

He can be indicted for a misdemeanor, punishable as aforesaid.

Is it an offence for a director, manager, or public officer of a body corporate or public company to publish a false statement or account?

By 24 & 25 Vict. c. 96, s. 81—86, it is a misdemeanor, assuming the party knew it to be false in any material particular, and done with intent to deceive or defraud any member, shareholder, or creditor, or to induce any one to become a shareholder or partner.

Can any and what proceedings be taken against a director or manager of a Joint Stock Company under 24 & 25 Vict. c. 96, for fraudulently appropriating property of the company?

Yes, any director or manager may be prosecuted and convicted of a misdemeanor, as also where they keep fraudulent accounts or wilfully destroy any book, paper, writing, or valuable security of the company, or make a false entry, or omit any material particular in any book of accounts or other document, or publish or concur in publishing any fraudulent statements or accounts in writing; the

punishment is penal servitude not exceeding seven years, or imprisonment, &c.

What is the offence of opening or delaying any letters ?

If the person is employed under the post-office he is guilty of a misdemeanor, punishable by fine or imprisonment, or both ; if he steals, embezzles, or steals moneys, &c., out of letters, it is a felony punishable in the former case by penal servitude for not more than seven or less than five years, or with imprisonment, &c., and in the latter for life. And *any other* person, who shall steal letters or money out of letters or post-bags, is guilty of felony; but in the case of the person stealing a post-bag or letters sent by packet, the punishment of penal servitude is for fourteen years, and in case of secretion of a bag or letter he is guilty of misdemeanor, punishable by fine and imprisonment, 1 Vict. c. 36, ss. 25 *et seq.*

Of what crime is the receiver of stolen goods guilty, and is there any difference in the offence of the receiver in reference to the circumstances under which the goods were stolen ?

By 24 & 25 Vict. c. 96, ss. 91—95, if he knew the goods to have been feloniously stolen, and the stealing amounted to a *felony*, he is guilty of felony, and he may be indicted and convicted as an accessory after the fact, together with the principal felon or after his conviction, or he may be indicted of a substantive felony, whether the principal felon has been convicted or not; the punishment is penal servitude for fourteen years or not less than five, or imprisonment, &c., with whipping under sixteen. If, however, the stealing is only misdemeanor the receiver is only guilty of a misdemeanor, and liable to not more than seven years' penal servitude, or imprisonment, &c.

Define forgery, and what is the essence of the crime ?

It is the fraudulent making or alteration of a writing to the prejudice of another man's rights, or of a stamp to the prejudice of the revenue.

The intention to defraud is the essence of forgery, and it is not necessary that the whole instrument should be fictitious ; any fraudulent insertion in a material part of a genuine document, any

fraudulent application of a false signature to a true instrument, or a real signature to a false one is sufficient.

What is the recent statute relative to forgery? Mention some of its enactments?

The principal statute is 24 & 25 Vict. c. 98, whereby the following offences, in connection with the public funds, are constituted felonies.

(1) The forging of any transfer of stock, whether public or of any body corporate, or any power of attorney relating thereto, is felony; (2) personating an owner of stock, and transferring or receiving or endeavouring to transfer and receive the dividends; (3) forging an attestation to a power of attorney for the transfer of stock or receipt of dividends; (4) making any false entry in the books of the public funds; (5) the making out of a false dividend warrant, or warrant for the payment of money by any clerk or servant of the bank, with intent to defraud; (6) forging an East India Bond or Exchequer Bill; (7) making or having in his possession plates, papers, or dies, for the manufacture of Exchequer Bills. See also 33 & 34 Vict. c. 58.

Mention some of the offences by the above statute made felonies as regards ordinary instruments.

- (1.) Forging bank notes, or uttering them, knowing them to have been forged.
- (2.) Purchasing, possessing, or receiving bank notes knowing the same to have been forged.
- (3.) The making, using, or possessing, without lawful authority, the moulds, engravings, or plates, for the making of bank notes or cheques.
- (4.) Forging, altering, or uttering, deeds, bonds, wills, bills of exchange, promissory notes.
- (5.) Obliterating crossings on cheques.
- (6.) Forging or uttering debentures.
- (7.) Obtaining money, chattels, or securities, by forged or altered instruments, &c.

What is the punishment for the above offences?

The punishments vary according to the extent of the forgery

from penal servitude for life to fourteen, seven, or five years, or imprisonment, &c.

If a merchant forge the trade marks of another, is this an offence? if so, by what Act?

By 25 & 26 Vict. c. 88, it is a misdemeanor, and in addition to the forfeiture of the articles is punishable by fine or imprisonment to the extent of two years with or without hard labour, or both fine and imprisonment.

What is the offence of obtaining property by false personations, and what the punishment?

Personating soldiers, seamen, or marines, to get their pay or prize-money, or personating owners of stock, are now by various statutes made felonies, and punishable by penal servitude for five years or not less than two years, or imprisonment for two years with or without hard labour.

What is the offence of obtaining property by false pretences, and what is the punishment?

By 24 & 25 Vict. c. 96, s. 88, it is a misdemeanor, assuming it to be committed with an intent to defraud; and even if it be found that the act amounted to a larceny the prisoner is not entitled to an acquittal. The punishment is penal servitude for not more than five years, or imprisonment, &c.

What is the offence of inducing a person to execute, make, accept, endorse, or destroy the whole or any part of a valuable security.

The above inducement or causing a person to write, impress, or affix the names or the name of any other person or of any company, or the seal of any body corporate, upon any paper or parchment in order that the same may be made or converted into a valuable security is a misdemeanor and punishable as above.

Is it an offence fraudulently to conceal deeds or falsify a pedigree?

By 22 & 23 Vict. c. 35, s. 24, and 23 & 24 Vict. c. 38, s. 8, it is a misdemeanor in the case of the vendor or mortgagor or his solicitor or agent, punishable with fine or imprisonment not

exceeding two years (with or without hard labour) or both. But no prosecution can be commenced without the Attorney-General's or Solicitor-General's consent, nor without notice to the party.

CHAPTER VI.

OFFENCES AGAINST THE GOVERNMENT.

What is the highest civil crime that any person can commit ?

High treason, which in its very name (borrowed from the French), imports a betraying, treachery, or breach of faith. It is where one attacks majesty itself, as killing or attempting to kill the sovereign.

Under what several heads may treason be classed ?

According to 25 Edward III., stat. 5, c. 2, they are,

- (1.) Compassing or imagining the death of the king or queen consort or their eldest son or heir.
- (2.) By violating the king's companion, his eldest daughter unmarried, or the wife of his eldest son.
- (3.) By levying war against the king in his realm.
- (4.) By adherence to the king's enemies.
- (5.) By killing the chancellor, treasurer, or king's justices in the execution of their offices.

What was the punishment of high treason ?

In males to be (1) drawn, (2) hanged, (3) beheaded, (4) quartered (5), the head and quarters to be at the king's disposal. But by 33 & 34 Vict. c. 23, s. 31, drawing, beheading, and quartering are abolished, as also forfeiture on attainder.

What is misprision of treason ?

The bare knowledge and concealment of treason without any degree of assent thereto, for any assent makes the party a principal traitor, 1 & 2 Ph. & M. c. 10.

Is it an offence to wilfully discharge or point any gun or other arms, loaded or not, at the Queen ?

By 5 & 6 Vict. c. 51, if done with the intent to injure or alarm her, or to commit a breach of the peace, it is a high misdemeanor punishable by penal servitude for seven or not less than five years with not more than three whippings.

Mention the Acts which, formerly coming within the laws relative to treason, have, by 11 & 12 Vict. c. 12, been made felonies.

- (1.) Within the United Kingdom or without, compassing the deposition of the Queen, her heirs or successors, from the style of the Crown of the United Kingdom or any other of her Majesty's dominions.
- (2.) Levying war against her Majesty within the United Kingdom, to compel her to change her counsels or overawe the Houses of Parliament.
- (3.) Stirring up any foreign power to invade the United Kingdom or other her Majesty's dominions, and expressing the same. Compassings by publishing, printing, or speaking, or by any overt act or deed.

Is it an offence to counterfeit gold or silver coin, or to gild or silver any coins intending to pass for current gold, and what is the punishment ?

In both cases, by 24 & 25 Vict. c. 99, ss. 2, 3, it is felony, as is also the receiving, putting off at a lower rate than the current rate, or importing it into this country knowing it to be counterfeit. 24 & 25 Vict. c. 99, ss. 6, 7.

The punishment is penal servitude for life or not less than five years, or imprisonment, &c.

Is it an offence to impair, diminish, or lighten any current gold or silver coin, and what is the punishment ?

If done with the intent that the coin so altered may pass for the current coin it is felony, punishable with penal servitude for fourteen or not less than five years, or imprisonment, &c.

Is it an offence for a person to have in his custody filings, clippings, dust, or solution produced by such diminishing or lightening coin, and what is the punishment?

It is felony if the person knows the same to have been so produced. The punishment is penal servitude for seven years, or not less than five with imprisonment.

Is it an offence to utter or have counterfeit coin in possession?

If the person knows the same to be counterfeit it is a misdemeanor, punishable with imprisonment not exceeding one year, with or without hard labour and solitary confinement, and if at the time of such uttering the offender have any more counterfeit coin in his possession, or within ten days he utter any more knowingly, the imprisonment may be for two years, and whoever has in his custody three or more pieces is guilty of a misdemeanor and liable to penal servitude for five years, or imprisonment, &c.; and a second offence in any of the above cases is felony punishable with penal servitude for life or not less than five years, or imprisonment, &c.

What offence is it to make or utter counterfeit copper coin?

A felony punishable with penal servitude for seven or not less than five years, or imprisonment, &c. And having three or more pieces of such coin knowing the same to be false, with intent to utter, is a misdemeanor punishable with imprisonment for any term not exceeding a year, with or without hard labour and solitary confinement.

Is it an offence to stamp names or words upon coins, and would such coins be a good tender?

It is a misdemeanor punishable with imprisonment not exceeding one year, with or without hard labour. It is not a legal tender, and any person tendering the same is liable to be convicted before two justices and fined forty shillings.

CHAPTER VII.

OFFENCES AGAINST JUSTICE.

What is maintenance?

It is the officious intermeddling in a suit by assisting either party with money or otherwise to prosecute or defend it.

What is champerty?

It is derived from the words *campum partire*, and is a species of maintenance, save that there is an agreement to divide the land between the parties should they succeed, whereupon the champertor carries on the party's suit at his own expense.

Define conspiracy.

The combination or agreement of two or more persons to do an illegal thing, that is, to effect something in itself unlawful, or to effect by unlawful means something which in itself may be indifferent or even lawful.

Define perjury.

A crime committed when a lawful oath is administered in some judicial proceeding to a person who swears wilfully, absolutely, and falsely in a matter material to the issue or point in question.

The perjury ought to be absolute, corrupt, and wilful, and material.

What is subornation of perjury?

The procuring another to take such a false oath as constitutes perjury in the principal.

What is the punishment for perjury and subornation of perjury?

They are both misdemeanors. The punishment by Common Law was fine and imprisonment, but by statute for not more than seven, not less than five years, and by 3 Geo. IV. c. 114, hard labour in addition to or in lieu of any term of imprisonment or other punishment.

CHAPTER VIII.

COURTS OF A CRIMINAL JURISDICTION.

What are the principal Courts which have jurisdiction in criminal matters ?

- (1.) The High Court of Parliament.
- (2.) The Court of the Lord High Steward.
- (3.) The Crown side of the Queen's Bench Division.
- (4.) The Admiralty Division.
- (5.) The Courts of Oyer and Terminer and General Gaol Delivery.
- (6.) The Central Criminal Court.
- (7.) The Court of General Quarter Sessions of the peace.

What is the jurisdiction of the Crown side of the Queen's Bench Division ?

It has jurisdiction in all criminal causes from treason to breaches of the peace. And indictments may be removed into the Queen's Bench from the inferior courts by writ of *certiorari* and tried either at bar or at *nisi prius*.

What are the Courts of Oyer and Terminer, and what is their jurisdiction ?

They are held twice in the year in every county before the Queen's Commissioners, among whom are usually the judges of the Courts at Westminster, the metropolis and parts of adjacent counties only excepted. They sit by the general authorities of (1) the Commission of the peace before alluded to ; (2) of *oyer and terminer* to hear and determine treasons, felonies, and misdemeanors within the county ; (3) the general gaol delivery, empowering them to try and deliver any prisoner who shall be in the gaol when the judges come on circuit ; and (4) by commission of *nisi prius* involving trials of a civil nature as before mentioned.

To what counties does the jurisdiction of the Central Criminal Court extend, and of what judges is it composed ?

It was established by 4 & 5 Will. IV. c. 36 ; it sits monthly, and

has jurisdiction of all offences committed in London and Middlesex, and in certain specified portions of the adjacent counties of Essex, Kent, and Surrey. The Lord Mayor and the Lord Chancellor, the Judges of the High Court, and the aldermen are in reality all Judges, but those who sit to try the prisoners are some of the Judges of the High Court, the Recorder, the Common Serjeant, and the Judge of the Sheriff's Court.

What is the Court of Quarter Sessions, and on what cases has it jurisdiction?

The Court is held in every county once in every quarter of the year. The Court is held before two or more justices of the peace, one of whom must be of the *quorum*. It has jurisdiction in smaller misdemeanors and felonies, such as offences relating to game, highways, alehouses, the Bastardy Acts, settlements of the poor, &c.

CHAPTER IX.

SUMMARY CONVICTIONS.

What do you mean by the term "Summary Conviction?"

In summary proceedings there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the law appoints, as in the case of frauds against the revenue laws or before justices of the peace for minor offences, or those mentioned in 24 & 25 Vict. cc. 96, 97.

What is the course of proceeding to be taken in order to obtain a summary conviction, and what is the principal statute now in force on the subject?

The complaint having been made, or the information laid before the justice, he issues a summons stating shortly the matter of such information or complaint, and requiring the attendance before him of the person named therein as defendant, and this summons having been served, and if not obeyed, may be followed up and enforced by warrant, and when the information has been

substantiated by the oath of the prosecutor, issue his warrant in the first instance. At the hearing, which takes place before one or two justices as the case may require, the substance of the information is stated to the defendant, who is then asked to show cause why he should not be convicted, or why an order should not be made against him. Should he admit the truth or show no cause, the justice will summarily convict him. If he does not admit the truth, the justice or justices proceed to hear the parties and their witnesses and evidence, and having considered the matter, convicts or dismisses the information as he or they think fit. The practice upon summary conviction is in general regulated by 11 & 12 Vict. c. 43, consolidating and amending previous provisions on the subject.

CHAPTER X.

ARRESTS.

What is an arrest?

The apprehending or restraining of one's person in order to be forthcoming to answer a crime whereof one is accused or suspected, which may be done either (1) by warrant ; (2) by an officer without warrant ; (3) by a private person without warrant, who is present when any felony is committed ; and (4) by hue and cry.

CHAPTER XI.

COMMITMENT AND BAIL.

What is commitment?

The confinement of one's person in prison for safe custody by warrant from proper authority, unless in bailable offences he puts in sufficient bail or security for his future appearance.

CHAPTER XII.

THE SEVERAL MODES OF PROSECUTION.

What is prosecution, and what are the various methods ?

A prosecution, which is the manner of accusing offenders, is either by the previous finding of a grand jury, as (1) by presentment ; (2) by indictment, or without such finding ; (3) by information ; (4) by appeal.

What was a presentment ?

The notice taken by a grand jury of any offence from their own knowledge or observation.

What is an indictment ?

A written accusation of one or more persons of a crime or misdemeanor preferred to and presented on oath by a grand jury, expressing with sufficient certainty the person, time, place, and offence.

What is an information, and how exhibited ?

A complaint exhibited (1) in the name of the Sovereign by his Attorney General ; and (2) in the name of the Sovereign and a private person or common informer upon penal statutes.

What was an appeal ?

An accusation brought by one private subject against another of larceny, rape, mayhem, arson, or homicide.

CHAPTER XIII.

ARRANGEMENT.

What is an arraignment?

The calling the prisoner to the bar of the Court to answer the matter of the indictment, and incident hereto is (1) the standing mute of the prisoner, or (2) his confession, the former of which in cases of petit treason and felonies of death, in olden times subjected him to the *peine fort et dure*. The confession might have been either simple or by way of approvement.

CHAPTER XIV.

PLEA AND ISSUE.

What are the various kinds of pleas?

(1) To the jurisdiction ; (2) a demurrer in point of law ; (3) a plea in abatement ; (4) a special plea in bar ; and (5) the general issue not guilty.

CHAPTER XV.

TRIAL AND CONVICTION.

What were the most ancient methods of trial?

- (1.) By ordeal of either fire or water.
- (2.) By corsned.
- (3.) By battle in appeals and approvements.
- (4.) By the peers of Great Britain, and
- (5.) By jury.

What is the method and process of trial by jury?

(1) The impanelling of the jury ; (2) the challenges, 1st for cause, and 2nd, peremptory ; (3) the award of the *tales* ; (4) the oath of the jury ; (5) the evidence ; and (6) the verdict.

CHAPTER XVI.

JUDGMENT, ETC.

When does judgment follow, and how may it be defined ?

Unless any matter be offered in arrest, immediately on conviction. It may be defined as the pronouncing of that punishment which is expressly ordained by law.

Of what was the attainder of a criminal the immediate consequence ?

- (1) Of having judgment of death pronounced against him ;
- (2) of outlawry for a capital offence.

What were the consequences of attainder ?

- (1) Forfeiture to the King ; (2) corruption of blood.

CHAPTER XVII.

REVERSAL OF JUDGMENTS.

How may judgments be avoided ?

- (1) By falsifying or reversing it ; or (2) by reprieve or pardon.

How may attainders be falsified or reversed ?

- (1.) Without writ of error for matter *dehors* the record.
- (2.) By writ of error for mistakes in the judgment.
- (3.) By demurrer or motion to quash the indictment for formal errors in the record.

CHAPTER XVIII.

REPRIEVE AND PARDON.

What is a reprieve, and in what cases is it usually granted?

A reprieve is the temporary suspension of the judgment. It may be granted—

(1) *Ex mandato regis*; (2) *ex arbitrio judicis*; and (3) *ex necessitate legis* for pregnancy, insanity, or the trial of identity of a person.

What are the various kinds of pardons, and how granted?

Either (1) absolute or (2) conditional, *i.e.*, the sovereign may extend mercy upon terms precedent or subsequent. The grant of such pardon is the merciful prerogative of the Crown, and it is either a warrant under the great seal or under the sign manual; and in cases of capital and other felonies, a warrant under the royal sign manual, countersigned by one of the principal secretaries of state, is sufficient (7 & 8 Geo. IV. c. 28, s. 13).

What is the effect of a pardon?

It makes the offender a new man, acquits him of all corporal penalties annexed to the offence, and gives him new credit and capacity.

THE END.

February, 1879.

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